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Crl.O.P.No.29879 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2023

CORAM:

THE HONOURABLE MS JUSTICE R.N.MANJULA

Crl.O.P.No.29879 of 2019 and
Crl.M.P.No.16100 of 2019

N.Kumar

...Petitioner

Vs.

1. State Rep. By
the Inspector of Police,
F-1, Chintadripet Police Station,
Chennai-600 002.

2. E.Mani
(Crime No.497 of 2019)

...Respondents

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records pertaining to Crime No.497 of 2019 on the file of the 1st respondent and quash the same as illegal, incompetent and abuse of process by allowing the present Criminal Original Petition.

For Petitioner : Mr.R.Jayaprakash for
Mr.K.Sulthan

For 1st Respondent : Mr.A.Gopinath,
Government Advocate (Crl. Side)

For 2nd Respondent : Mr.M.Desingu



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ORDER

This Criminal Original Petition is filed to quash the FIR in Crime No.

497 of 2019 on the file of the 1st respondent Police.

2. The 2nd respondent is running a business in selling compute and computer related equipments in the name and style Makwell Computer Systems. The petitioner is running his concern by name Vista Computer and he placed orders for computer related goods to the 2nd respondent company and had purchased the same to the tune of Rs.81,36,213/- between the period 15.09.2017 and 10.01.2018 and for which the petitioner made a part payment of Rs.35,28,625/- and by withholding a sum of Rs.46,07,588/- with the criminal intention, threatened the 2nd respondent. On the above allegation, FIR has been registered for the offences under Sections 406 and 420 I.P.C.

3. Heard the learned counsel for the petitioner, learned Government Advocate (Crl. Side) appearing for the 1st respondent and the learned counsel appearing for the 2nd respondent.

4. The learned counsel for the petitioner submitted that the order itself



was placed only after depositing the entire sale consideration and the petitioner has no due to pay any amount to the 2nd respondent. Even it is presumed that it is some outstanding dues, that can be viewed only as business transaction and no criminal colour can be given. Since the 2nd respondent had given criminal colour to the business transaction, the proceedings should be quashed.

5. The learned counsel appearing for the 2nd respondent submitted that the petitioner has not stated that he has paid the balance amount of Rs.46,07,588/- to the 2nd respondent directly. It is alleged by the petitioner that he had paid the said amount through a middle man one Srinivasan to the 2nd respondent. The conduct of the petitioner would show his criminal intention and hence the complaint is maintainable.

6. No doubt the amount involved is the due to be paid by the petitioner to the 2nd respondent in connection with the computer and computer related equipments purchased by him from the 2nd respondent. The 2nd respondent has admitted the receipt of Rs.35,28,625/-, out of the sale



price of Rs.81,36,213/-. The petitioner has stated that he had a due of Rs.46,07,588/- and that was not directly paid by him to the 2nd respondent.

The case could have been concluded as civil transaction between the parties basing upon the business requirements. But the categorical contention of the petitioner is that he made direct payment to the 2nd respondent to the tune of Rs.35,28,625/-. In that case, nothing would have prevented the petitioner to make the balance payment to the 2nd respondent directly. But he has stated that the balance amount was made through the mediator Srinivasan and to that effect, an agreement has also been entered into between the parties. Since the averments, on the face of it, would show that the petitioner did not make any direct payment to the 2nd respondent excepting the initial payment of Rs.35,28,625/- and the balance was paid to the mediator Srinivasan, investigation should be allowed to continue to investigate on these aspects. Only then the intention of the petitioner can come to light. Though it apparently appears to be a civil transaction and the payment of balance amount is said to have been made by the petitioner would contain doubts, that should be clarified only through investigation. Hence, I do not feel it is an appropriate case where the criminal proceedings



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can be quashed without making rowing enquiry about the participation of each of the parties in the transaction and their intention. .

7. In view of the above stated reasons, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

30.01.2023

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Index:yes/No

Speaking order / Non speaking order

To

1. The Inspector of Police,
F-1, Chintadripet Police Station,
Chennai-600 002.
2. The Public Prosecutor,
Madras High Court,
Chennai.

R.N.MANJULA,J.



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