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Crl.O.P.(MD)No.5053 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 17/11/2023

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

Crl.OP(MD)No.5053 of 2023

and

Crl.MP(MD)Nos.4469 and 4471 of 2023

Prabu Sethupathy : Petitioner/Sole Accused

Vs.

1.The State of Tamil Nadu,
rep. by the Inspector of Police,
Town West Police Station,
Dindigul District.
(Crime No.272 of 2019) : R1/Complainant

2.T.R.Saravanan : R2/De-facto Complainant

PRAYER:- Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records pertaining to the impugned charge sheet in CC No.1036 of 2022 on the file of the Judicial Magistrate No.1, Dindigul, in Crime No.272 of 2019 U/s. 406, 420 and 506(i) IPC, dated 10/09/2019 on the file of the 1st respondent and quash the same as illegal and pass such further or other orders.

For Petitioner : Mr.K.Dinesh

For 1st Respondent : Mr.M.Vaikkam Karunanithi
Government Advocate
(Criminal side)

For 2nd Respondent : No appearance



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O R D E R

WEB COPY This criminal original petition has been filed seeking quashment of the case in CC No.1036 of 2022 on the file of the Judicial Magistrate No.1, Dindigul in Crime No.272 of 2019 on the file of the 1st respondent.

2.The case of the prosecution is that the de-facto complainant is the Proprietor of COLOURS AGENCY SERVICE. The petitioner is the Manager of SMILEY TRIPS AGENCY having office at Palani Road, Dindigul. On 28/02/2018, an agreement was entered into between the parties for publishing 'SMILEY TRIPS AGANCY' advertisement in a leading newspaper. It was agreed that the petitioner has to pay the entire amount for publication. The petitioner has paid Rs.1,00,000/- as initial payment. The remaining amount of Rs.3,55,700/- has to be paid by the petitioner on or before 02/06/2018. But he failed to pay the remaining amount. When the de-facto complainant demanded money, he was threatened by the petitioner. On the basis of the complaint given by the de-facto complainant, a case in Crime No.272 of 2019 was registered for the offences under sections 406, 420 and 506(i) IPC. After completing the investigation, final report was filed and it was taken cognizance in CC No.1036 of 2022 by the Judicial Magistrate No.1, Dindigul.



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3. Seeking quashment of the same, this petition has been filed.

4. Heard both sides.

5. The learned counsel appearing for the petitioner would submit that reading of the entire complaint and final report does indicate that it is purely a business transaction between the petitioner and the de-facto complainant herein; In the complaint itself, it has been fairly admitted that acknowledgment of liability was executed by the petitioner, on 02/06/2018. So according to the petitioner, the de-facto complainant ought to have initiated civil proceedings for recovering the money. He would also rely upon the judgments; **(i) Sarabjit Kaur Vs. State of Punjab and another [(2023(5) SCC 360]; and (ii) An unreported judgment of this court made in CrI.OP (MD) No. 3506 and 4418 of 2019, dated 04/02/2022 (S. Suthakar Vs. The State, represented by the Inspector of Police, Sattur Town Police Station, Virudhunagar District)** for the purpose of argument that there was no allegation to the effect that even at the beginning of the transaction between the parties, there was intention on the his part to cheat.

6. Reading of the complaint, as mentioned above, does indicate the acknowledging the liability. The petitioner



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alleged to have executed the Deed of Undertaking, on 02/06/2018. This indicate that there was no intention on his part to cheat.

7.Section 420 IPC reads as under:-

"420.Cheating and dishonestly inducing delivery of property.-Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

8.Reading of the above definition clause along with the allegations made against the petitioner does not even remotely indicate that the petitioner was having any intention to cheat the de-facto complainant. So the offence under section 420 IPC is not attracted.

9.Similarly the offence under section 406 IPC may also not be attracted. As pointed out by the petitioner, there was no entrustment of the property. Here absolutely, there is no ingredient. What was entrusted to the petitioner was the liability to pay the money or



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charge as the case may be, for the service rendered. So that will not fit into the category of entrustment. Liability can be enforced through legal process. Here absolutely, there is no entrustment of any property to the petitioner. As mentioned above, a legal liability cannot be construed as property.

10.For attracting the offence under section 506(i) IPC, the ingredients of section 503 IPC must be fulfilled.

11.Section 503 IPC reads as follows:-

"503.Criminal intimidation.—

Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation."

12.When we draw the allegation mentioned in the final report to the ingredients, it is also seen that it is not attracted. A simple abusive word alleged to have



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been exaggerated as if he was criminally intimidated.

13. Whether the de-facto complainant initiated any further action for recovery of the amount is not clear on record. Further, after receipt of the notice issued by this court, the de-facto complainant remained absent and did not choose to contest the matter.

14. The entire reading of the materials shows that it is an attempt on the part of the de-facto complainant to convert the civil action into the criminal liability. It may not be proper. On that sole ground, this petition is liable to be allowed.

15. In the result, this criminal original petition is **allowed**. The case in CC No.1036 of 2022 on the file of the Judicial Magistrate No.1, Dindigul, in Crime No.272 of 2019 on the file of the 1st respondent is hereby quashed. Consequently, connected Miscellaneous Petitions are closed.

17/11/2023

Index:Yes/No
Internet:Yes/No
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To,

- 1.The Judicial Magistrate No.I,
Dindigul.
- 2.The Inspector of Police,
Town West Police Station,
Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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