BEFORE THE MADURAI BENGH OF MADRAS HIGH COURT

DATED : 20.03.2023

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.385 of 2017

C.Selvan ... Revision Petitioner/
Respondent/Defacto Complainant

Vs.

1.A.D.Padmasingh Issac
2.J.Robert
3.M.Pachaiappan ... Respondents/
Petitioners/Accused Nos.1 to 3

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records pertaining to the order in Crl.M.P.No.5399 of 2016 in C.C.No.199 of 2014 on the file of the learned Judicial Magistrate No.I, Nagercoil, dated 19.12.2016 and set aside the same.

For Petitioner : Mr.G.Karuppasamy Pandian

For RR 1 & 2 : Mr.V.Kathirvelu
Senior Counsel
for Mr.K.Prabhu

ORDER

This revision has been filed challenging the order passed in Crl.M.P.No.5399 of 2016 in C.C.No.199 of 2014 on the file of the learned Judicial Magistrate No.I, Nagercoil, dated 19.12.2016, thereby discharging the respondents from the charges under Sections 34, 107, 120B, 406, 465 and 420 I.P.C.

2.The petitioner filed a private complaint as against the respondents under Section 200 of Cr.P.C., alleging that in pursuant to an advertisement in the year 2006, thereby calling for applications for the appointment of super stockists in Kanyakumari District and Tuticorin, for supplying the food products manufactured by the respondents. The petitioner was chosen as the super stockist for Tuticorin District by the respondents. Thereby, the petitioner was working as a super stockist under the name and style of "Niks Enterprises" from 03.04.2006 to 05.07.2006. Later, the respondent was doing business in the name of "Thai Agency" and he continued as a super stockist for Tuticorin Area from 25.09.2006 to 04.11.2009. The petitioner was also appointed as a super stockist of Aachi Masala products for Kanyakumari District and he carried on his business under the name and style as "Kanya Enterprises" in the name of his wife. During the course of business, the first respondent used to send his products on advance payment of the amount by the petitioner either through cheque or DD. The petitioner paid a sum of Rs.6,91,44,473/- through his three entities to the first respondent and the first respondent supplied goods for a total sum of Rs.6,73,57,257/- to the said three business establishments. Therefore, the first respondent is liable to return cash of Rs.17,87,216/- and in addition, the first respondent is liable to pay a sum of Rs.2,13,000/- for the expiry items. Therefore, the accused persons had committed the offences under Sections 34, 107, 120-B, 406, 465 and 420 of I.P.C.

3.In order to take cognizance, the trial Court had recorded the sworn statement of the petitioner and on the basis of the statement of the petitioner, a process was issued against the respondents/A.1 to A.3 under Sections 406, 420, 34 and 107 of I.P.C. In order to discharge them from all the charges, the respondents 1 to 3 / Accused Nos.1 to 3 filed a petition in Crl.M.P.No.5399 of 2016 on the file of the learned Judicial Magistrate No.I, Nagercoil, under Section 245(1) of Cr.P.C and the same was allowed by the trial Court, by order dated 19.12.2016. Aggrieved by the same, the respondent therein, filed the present Revision.

4.The learned counsel appearing for the petitioner would submit that the trial Court, without giving an opportunity to the petitioner, permitted the respondents to file a petition in Crl.M.P.No. 5399 of 2016 under Section 245(1) of Cr.P.C and allowed the same. That apart, there are specific allegations in order to attract the offence under Sections 34, 107, 120-B, 406, 465 and 420 of I.P.C as against the respondents. Even then the trial Court, without considering the same, conducted a roving enquiry and discharged the respondents. All the points discussed by the trial Court are material for trial and without permitting the petitioner to substantiate his contention, the trial Court mechanically discharged the respondents. The trial Court need not go deep into the probate value of the material on record and it is for the Court to decide whether a *prima facie* case has been made out or not. It is not for the Court to weigh the pros and cons of evidence and to analyze them in a meticulous fashion while considering the discharge petition. In order to substantiate his contention, he relied on the Judgment of this Court in ***N.Sagayam and others Vs. Prabhavathi*** reported in ***[2016 (2) T.N.L.R 129 (Mad)]***, wherein, it is held as follows:-

"14.As per Section 245 of Cr.P.C., the Learned Magistrate is required to consider the evidence with a view to forming prima facie case for conviction. When a prima facie case is made out, the charges should be framed as per decision in R.S.Nayak V. Antulay, AIR 1986 SC 2045. The test of 'Prima facie' is to be pressed into service before framing of charge. As per Section 245(2) of Cr.P.C., the term 'Groundless' means that the evidence is such that no conviction can be rested on it and not that the evidence does not disclose any offences whatsoever.

15.It is to be noted that Section 245 Cr.P.C., enjoins that the Learned Judicial Magistrate to discharge the accused only if after taking all the evidence referred to in Section 244 Cr.P.C., the Magistrate considers for reasons to be recorded that no case against the accused has been made, which, if unrebutted, would warrant his conviction and not otherwise.

16.At this stage, this Court very relevantly points out that the acid test of prima facie case is to be applied by a Court of Law before framing of charge. The term 'prima facie' means a case established by ex-facie evidence which in turn means evidence sufficient in Law to raise a presumption of fact or establish fact in question unless rebutted.

17.At the time of considering the 'Discharge Petition', it is not for the Court to weigh the pros and cons of evidence and to analyse them in a meticulous fashion. Section 245 of Cr.P.C., is meant for filtering frivolous or vexatious private complaints and to protect the accused from the harassment."

5.The learned counsel appearing for the petitioner also relied on the Judgment of the Honourable Supreme Court of India in ***Saranya Vs. Bharathi and another*** reported in ***(2021) 3 MLJ (Crl) 640 (SC)***, wherein it is held as follows:-

"7.1 In the case of State of Madhya Pradesh Vs. No. (supra), to which one of us (Dr. Justice D.Y. Chandrachud) is the author, after considering the other binding decisions of this Court on the point, namely, Amit Kapoor v. Ramesh Chander (2012) 9 SCC 460; State of Rajasthan v. Fatehkaran Mehdu (2017) 3 SCC 198; and Chitresh Kumar Chopra v. State (Government of NCT of Delhi) (2009) 16 SCC 605, it is observed and held that at the stage of framing of charges, the Court has to consider the material only with a view to find out if there is a ground for "presuming" that the accused had committed the offence. It is observed and held that at that stage, the High Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, take at their face value, disclose the existence of all the ingredients constituting the alleged offence or offences. It is further observed and held that at this stage the High Court is not required to appreciate the evidence on record and consider the allegations on merits and to find out on the basis of the evidence recorded the accused charge-sheeted or against whom the charge is framed is likely to be convicted or not."

6.Per contra, the learned Senior Counsel appearing for the respondents would submit that the entire transaction is a business transaction between the petitioner and the respondents herein. In fact, the last payment was made by the petitioner on 11.11.2009, whereas the complaint was lodged only in the year 2014, that too, without following the procedure under Section 156(4) of Cr.P.C. That apart, in the year 2009 itself, the second respondent herein lodged a complaint as against the petitioner for cheating to the tune of Rs.24,00,375/-. However, the said complaint was closed by the District Crime Branch for the reason that the respondents failed to cooperate with the enquiry. Further, the third respondent herein lodged a complaint in the year 2012 before the Inspector General of Police, Madurai, for cheating. Therefore, the present impugned complaint was filed only in order to escape from the clutches of law.

7.The main crux of the complaint is that the respondents failed to repay the amount, after deducting the supply of goods and also after deducting the extra good value. Therefore, it is completely a business transaction and the trial Court rightly discharged the respondents from all the charges.

8.Heard the learned counsel appearing on either side and perused the materials available on record.

9.It is seen that the petitioner lodged the complaint alleging that he paid a sum of Rs.9,91,44,473/- in the name of his three business establishments in order to supply the goods from the respondents. On receipt of the same, the respondents supplied goods only to the tune of Rs.6,73,57,257/- and they failed to return the amount of Rs.17,87,216/-. They also failed to repay the amount of Rs.2,13,000/-, which was deducted from the supply of expiry goods. Therefore, it is nothing but a business transaction between the petitioner and the respondents herein. Whereas perusal of the records revealed that the first respondent herein lodged a complaint as against the petitioner for cheating to the tune of Rs.24,00,375/- as early as on 03.12.2009. The said complaint was marked in support of the petitioner's complaint. It was closed for non-cooperation of the respondents for enquiry. Once again in the year 2012, another complaint was lodged by the third respondent for cheating which was also marked in support of the petitioner's complaint in order to take cognizance of the complaint. Thus, it is clear that the respondents lodged complaints in the years 2009 and 2012. After the said complaints were closed, the petitioner come forward with the present complaint that too on 23.07.2014. That apart, there is absolutely no evidence to show that the petitioner lodged the complaint before the jurisdictional police and thereafter, the jurisdictional police did not take any action on the complaint lodged by the petitioner and approached the concerned jurisdictional Magistrate Court to register the complaint under Section 200 of Cr.P.C.

10.It is true that the trial Court while dealing with the petition filed under Section 245(1) of Cr.P.C is required to consider the evidence with a view to forming *prima facie* case for conviction. When a *prima facie* case is made out, the charges should be framed. The test of *prima facie* is to be pressed into service before framing of charge. Further, it is not for the Court to weigh the pros and cons of evidence and to analyze them in a meticulous fashion.

11.In the case on hand, after recording the sworn statement of P.W.1, namely, the petitioner herein, the respondents filed a petition in Crl.M.P.No.5399 of 2016 for discharge under Section 245(1) of Cr.P.C. On perusal of the complaint as well as the sworn statement recorded from the petitioner clearly revealed that the entire business transactions are civil in nature. Therefore, no materials are available to attract the offences under Sections 34, 107, 120B, 406, 465 and 420 I.P.C. It is purely a business transaction between the petitioner and the respondents herein. That apart, the last payment was made by the petitioner in the year 2009 and the goods also supplied by the respondents in the year 2009 itself. Whereas, the petitioner lodged the complaint only in the year 2014. Therefore, there is absolutely no *prima facie* case made out by the petitioner in order to attract the offence as alleged by him. Further, the above Judgments cited by the learned counsel appearing for the petitioner are not helpful to the case on hand. Hence the trial Court rightly discharged the respondents and this Court finds no infirmity or illegality in the order passed by the Court below and the revision is liable to be dismissed.

12.Accordingly, this Criminal Revision Case is dismissed.

20.03.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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To

1.The Judicial Magistrate No.I,
Nagercoil.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

G.K.ILANTHIRAIYAN, J.

ps

Order made in
Crl.R.C(MD)No.385 of 2017

20.03.2023