BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 12.07.2023

Delivered On : 03.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl.O.P(MD).No.19222 of 2019
and
Crl.M.P.(MD)Nos.11282 and 11284 of 2019

S.Sridhar ...Petitioner

Vs

1.The State rep. by its,
The Inspector of Police,
City Crime Branch,
Trichy District.
(Crime No.47 of 2018)

2.Shankaralingam ...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the records pertaining to the case in C.C.No.2416 of 2019 on the file of the learned Judicial Magistrate No.II, Trichy and quash the same as illegal as far as the petitioner is concerned.

For Petitioner	:	Mr.V.Kathirvelu, Senior Counsel For Mr.J.Jeyakumar
For 1st Respondent	:	Mr.M.Sakthi Kumar Government Advocate (Crl. Side)
For 2nd Respondent	:	Mr.R.Gandhi, Senior Counsel For M/s.R.Sridevi

ORDER

This petition is filed to quash the charge sheet in C.C.No.2416 of 2019 on the file of the learned Judicial Magistrate No.II, Trichy.

2.According to the petitioner, the respondent police had registered a case in Crime No.47 of 2018 for the offence under Section 465, 468, 471, 406, 420 and 506(i) of IPC as against the petitioner and one Ramasubramanian @ Ravi dated 06.03.2018. Thereafter, the respondent police had completed the investigation and filed a charge sheet before the learned Judicial Magistrate No.II, Trichy and the same was taken on file as C.C.No.2416 of 2019 for the offences punishable under Sections 465, 468, 406 and 420 of IPC. In the said charge sheet, the petitioner was arrayed as A1 and there is no specific allegations as against the petitioner. Hence, the petitioner filed this petition to quash the charge sheet.

3.In fact the petitioner is running a company in the name and style of S.J.Engineers Renevable Energy Private Limited, Madurai and the defacto complainant's company namely Shankar Abodes Solar Private Limited engaged with the petitioner to put up two Mega Watt (2MW) solar power generation unit in his land in Hiraniyamangalam and Sivayam Village in

Kulithalai Taluk, Karur district and thereafter, the petitioner's company and the defacto complainant's company entered into an agreement dated 10.02.2017. As per agreement, the defacto complainant's company agreed to pay Rs.11 Crores for setting up the solar power unit and the petitioner received Rs.3 Crores from the defacto complainant's company to import solar panels from foreign countries. Thereafter, entire solar panels and other machineries were erected in the defacto complainant's land worth about Rs.8.4 Crores. But the defacto complainant's company has violated the agreement and continued the work with some other company.

4.The actual fact of the case was that as on 31.07.2018, the defacto complainant's company has paid Rs.6,58,29,123/- to the petitioner's company and remaining amount has not been paid by them and swindled the petitioner's raw materials worth about Rs.60 Lakhs and when the same was questioned by the petitioner, the defacto complainant threatened the petitioner with dire consequences and refused to return the balance amount and other materials. Hence, the petitioner has preferred a complaint to the first respondent and a case in Crime No.13 of 2019 dated 13.08.2019 was registered for the offence under Sections 406, 420 and 506(i) of IPC. In the meanwhile, the defacto complainant suppressed the above said facts and preferred a false complaint against the petitioner and registered the said case. The petitioner also filed a direction petition in Crl.O.P.(MD)No.14422 of 2019 to transfer the investigation of the said Crime No.13 of 2019 on the file of the Inspector of Police, Karur to the CBCID, Chennai and the same was disposed of on 24.10.2019. In the meanwhile, the respondent police hurriedly filed the charge sheet before the trial Court.

5.As far as the charges against the petitioner are concerned, there are no materials to constitute such offence. The entire case itself activated by malice and it should not be permitted to stand. Hence, the charge sheet is liable to be quashed.

6.The second respondent has filed counter alleging that the petitioner has suppressed the true facts and approached this Court with unclean hands. The petitioner and the second respondent entered into agreement dated 10.02.2017 for business purpose and agreed to pay Rs.11.20 Crores for setting up solar power unit. The petitioner, Director of S.J. Engineers Reneveable Energy Private Limited, Madurai had indulged in criminal activities along with another Directors Ravi @ Ramasubramanian such as forgery, forgery for purpose of cheating, using forged document as genuine one and criminal breach of trust and caused criminal intimation. The second respondent had lodged a complaint before the Trichy Crime Branch and based on that, the respondent Police registered the said case against the petitioner and one Ravi @ Ramasubramanian and the charge sheet also filed before the learned Judicial Magistrate No.II, Trichy. The learned Judicial Magistrate also taken on file as C.C.No.2416 of 2019. The dispute between the petitioner and the second respondent is not a civil dispute and with a view to cheat the second respondent, the petitioner had all along and he had gained unjustifiably.

7.In the middle of completion of erection work, the petitioner had requested the defacto complainant to transfer a sum of Rs.2 Crores into his account for the purchase of solar panels represented that he would purchase such panels from a company that is manufacturing solar panels in China and he would supply the same to the project. Believing the words of the petitioner, the bonafide as requested by the defacto complainant, the petitioner had transferred a sum of Rs.2 Crores from his account from the defacto complainant's account maintained with Axis Bank, Trichy Cantonment Bracnh having Account No.917020026983038 to the company Account of the petitioner maintained with HDFC Bank Limited, Chennai Alwarpet Branch having Account No.50200006993335 on 05.12.2017 as per UTIBR Transaction No.52017120500350380. Further the petitioner represented that he paid Rs.1,80,39,295.93/- to the Manufacturing unit at China on 15.12.2019 and in support of his contention, on 04.01.2018, he had sent two whatsapp messages in PDF form to the petitioner's mobile No.7373760602. One of the PDF files is the statement of accounts. The statement shows that a sum of Rs. 1,80,39,295.93/- was paid as advance payment of import Bill on 15.12.2017. The another PDF file is the letter said to have been sent by Schutten Solar Energy Limited at China addressed to Ravi @ Ramasubramanian signed on 04.01.2018, which acknowledged 2,93,139.84 US Dollars. The colleague of the petitioner Ravi @ Ramasubramanian had also send a SWIFT message of the Bank relating to foreign fund Transfer through whatsapp message to the mobile phone No.73737606602 on 18.12.2017.

8.Thereafter, the second respondent came to realize that Ravi @ Ramasubramanian, who is also another Director of the company along with the petitioner had manipulated the information sent by him through whatsapp message by showing the column relating to currency was shown as Dollar whereas the column meant for quoting 'amount' was not shown at all whereas in the email communication, in the column relating to 'amount', the said Ravi @ Ramasubramanian had manipulated the entry as 2,83,189.54 USD. It is crystal clear from the above that Ravi @ Ramasubramanian had schemingly furnished false information to the second respondent. Thereafter, when the defacto complaninat was able to check the bank account details of the petitioner's company, he came to know that SWIFT message of concerned bank as had been furnished by the said Ravi @ Ramasubramanian through whatsapp message, he had furnished false information with a view to make the defacto complainant believe such statement.

9.In the SWIFT message, it was mentioned that Rs.2,83,139.84 USD was paid by the second respondent to said company on 15.12.2012. But subsequently, it transpired that the second respondent had paid only Rs. 1,23,076.92/- USD into the account of the said company. In the 'statement of accounts' as was furnished by the petitioner, in the column relating to 'withdrawal', the petitioner herein had interlineated the numeral '1' preceding the numeral Rs.80,39,295.93/- and thereby he had created a fake belief circumstances as if he had remitted Rs.1,80,39,295.93/- to the Manufacturer. The petitioner and Ravi @ Ramasubramanian who had received Rs.2 Crores from the petitioner for procurement of solar panels from Schutten Solar Energy Limited. They have not supplied the Schutten Solar Panels so far after receiving huge amount. After scrutiny of the accounts, the defacto complainant and his wife came to realize that they have been deceived by the petitioner along with Ravi @ Ramasubramanian schemingly. Pursuant to the 'agreement', the second respondent paid a sum of Rs.8,04,37,493/- to the petitioner as on 31.07.2018. Apart from that, the second respondent had also made payment to vendors for the said project for a sum of Rs.3,95,92,239/-.

Thereafter the second respondent engaged the 'Trina Solar Company Private Limited' amounts to Rs.2 Crores 2 Lakhs, which can be adjusted from the payment made by the second respondent as lies the facts of events the supply of earlier order of panels from Schutten Solar worth Rs.2 Crores as promised by the petitioner remained undelivered as on date.

10.Having received major portion of the project cost, the petitioner and his colleague Ravi @ Ramasubramanian had totally abandoned the project owned by the second respondent and had not chosen to complete the project as assured by them. While the facts are being so, the charge sheet cannot be quashed and an elaborate trial is essential in this case.

11.The learned counsel appearing for the petitioner would contend that there is an agreement between the petitioner and the second respondent with regard installation of solar panels and as per agreement, the second respondent agreed to pay a sum of Rs.11 Crores and the petitioner also started the work and installed the solar panels. For purchasing solar panels, he paid a sum of Rs.2 Crores to the Schutten China company. The second respondent has to pay the entire amount of Rs.11 Crore and the petitioner is duty bound to complete the project by installing the solar panels. After releasing amount of Rs.8 Crores and odd, the second respondent raised question regarding the payments made by the petitioner and there are some misunderstanding between the petitioner and the second respondent. Thereby, they failed to repay the said amount as agreed by them.

12.Even according to the complaint, there was no allegation with regard to agreement entered between them and also no allegation with regard to payment made for a sum of Rs.8 Crores and odd. This is pure civil dispute and as per agreement, the parties have to approach the Arbitrator and no arbitration proceedings was initiated and the second respondent has straight away lodged a false complaint. Based on the false complaint, the respondent police also laid a final report without conducting fair investigation. There is no jurisdiction to the first respondent to entertain the FIR and to file final report.

13.Entire transaction happened within the jurisdiction of Karur district but for his convenience, the second respondent filed a complaint before the first respondent police and the same is also not maintainable. Therefore, the charge sheet filed by the first respondent is liable to be quashed.

14.The learned counsel appearing for the second respondent would contend that there is no dispute with regard to agreement between the parties.

After the agreement, while depositing a sum of Rs.2 Crores in the account of petitioners, they purchased materials only for Rs.80,39,295.93/- and they added '1' in front of the actual amount. Further they sent message through whatsapp for the said payment and also they send a records as if China company acknowledged for the amount of 2,93,139.84 US Dollars. Further Ravi @ Ramasubramanian sent a shift message of the bank relating to foreign fund through whatsapp message. Without paying the above said Rs.2 Crores to the China company for the purchase of solar panels, the petitioner only paid a sum of 1,23,076.92 US Dollars. Thereby the petitioner and the said Ravi @ Ramasubramanian cheated and the offences committed through documents and thereby, it needs elaborate trial. The respondent police also conducted elaborate investigation and after having *prima facie* materials, they filed the charge sheet and this Court need not interfere with the case at this stage and it is the matter of trial and all the allegations raised by the petitioner are nothing but defence to be taken before the trial Court and he has to face trial before the trial Court.

15.This Court heard both sides and perused the materials available on record.

16.It is admitted fact that both the petitioners and second respondent company entered into agreement in respect of the erection of solar panels for generating energy and also entered into agreement dated 10.02.2017 and also the second respondent agreed to pay a sum of Rs.11 Crores and there is no dispute to the above said amount. The second respondent contention is that the first respondent and one Ravi @ Ramasubramanian, who is one of the Director in the petitioner's company joined together with the petitioner and cheated the second respondent by altering the figures in the whatsapp message sent to him. The second respondent paid a sum of Rs.2 Crores to the petitioner for purchase of solar panels and after receipt of Rs.2 Crores, for purchase of solar panels from the China company, they did not pay the entire amount to the company. They paid only a sum of Rs.80,39,295.93/- but the above amount was shown to the second respondent through whatsapp message as Rs.1,80,39,295.93/- by adding '1' in front of the actual amount I.e. Rs. 80,39,295.93/- paid by them. According to the petitioner, since there is an agreement between the parties, the entire complaint is pure civil in nature and further there is a clause of arbitration in the agreement itself with regard to disputes any arise between the parties. Though the matter is arising out of Contract Act according to the second respondent, there are some manipulations in the records and thereby, the criminal offences are involved in the case. The second respondent also not disputed the previous payment made by the petitioner. The only dispute is with regard to Rs.2 Crores for purchase of solar panels.

17.The learned counsel appearing for the petitioner would rely upon a judgment of the Hon'ble Supreme Court in the cases of (i)***Vesa Holdings P. Limited and another v. State of Kerala and others*** in ***Criminal Appeal No. 2341 of 2011***, wherein Hon'ble Supreme Court in para no.9 held as follows:

> *"9. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC. In our view the complaint does not disclose any criminal offence at all. Criminal proceedings should not be encouraged when it is found to be malafide or otherwise an abuse of the process of the court. Superior courts while exercising this power should also strive to serve the ends of justice. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and the High Court committed an error in refusing to exercise the power under Section 482 Criminal Procedure Code to quash the proceedings."*

(ii)***Binod Kumar and others v. State of Bihar and another*** in ***Criminal***

Appeal No.2327 of 2014, wherein Hon'ble Supreme Court in para no.18 held as follows:

> *"18.In the present case, looking at the allegations in the complaint on the face of it, we find no allegations are made attracting the ingredients of Section 405 IPC. Likewise, there are no allegations as to cheating or the dishonest intention of the appellants in retaining the money in order to have wrongful gain to themselves or causing wrongful loss to the complainant. Excepting the bald allegations that the appellants did not make payment to the second respondent and that the appellants utilized the amounts either by themselves or for some other work, there is no iota of allegation as to the dishonest intention in misappropriating the property. To make out a case of criminal breach of trust, it is not sufficient to show that money has been retained by the appellants. It must also be shown that the appellants dishonestly disposed of the same in some way or dishonestly retained the same. The mere fact that the appellants did not pay the money to the complainant does not amount to criminal breach of trust."*

18.On careful reading of the aforesaid judgments, it is clear that in order to attract Section 420 of IPC, the averments of the complaint is required to show that at the very inspection, there was an intention on behalf of the accused persons to cheat, which is condition pertaining for the offences under Section 420 of IPC and further, the civil in nature of case cannot be given color of criminal offence and the criminal proceedings are not shortcut of other remedies available in law. In the case on hand, though the agreement was entered between the parties, there is no dispute with regard to said agreement and the amount already paid between the parties. In the present case, the dispute is with regard to payment made by the second respondent to the petitioner in respect of purchase of solar panels. Thereby the said case will not applicable to the present facts of the case.

19.The learned counsel appearing for the second respondent relied on the judgment of the Hon'ble Supreme Court in the cases of (i) ***Dr. Lakshman v. State of Karnataka and others*** reported in ***(2019) 9 Supreme Court Cases 677***, wherein, the Hon'ble Supreme Court in para no.8 held as follows:

> *"8.It is not seriously disputed by the parties with regard to the entering of the agreements for procuring the land in favour of the appellant in Ballur Village, Anekal Taluk, Bangalore Urban District and respondents have received the amount of Rs.9 crores by way of demand drafts and cheques. It is the specific case of the appellant that there are schedules mentioned to the agreements as per which respondents have agreed to procure the land covered by Survey Nos.115 and 117 of Ballur Village apart from other lands. In a petition under Section 482, Cr.P.C. it is fairly well settled that it is not permissible for the High Court to record any findings, wherever there are factual disputes. Merely on the ground that there is no pagination in the Schedule, the High Court has disbelieved such Schedule to the Agreements. It is the specific case of the appellant that the lands covered by Survey Nos.115 and 117 Crl.A.@ SLP(Crl.)Nos.6115-6117/2017 of*

Ballur Village were sold even prior to the first agreement, as such respondents have committed an act of cheating. It is also the specific case of the appellant that two cheques were issued by respondents-accused by way of security for the amount of Rs.9 crores which is advance but the account of such cheques was closed even prior to entering into the Agreement itself. The second complaint filed by the appellant is self-explanatory and he is forcefully made to sign the sale deed which were executed subsequently for the lands covered by Survey Nos.115 and 117 of Ballur Village. Mere filing of the suits for recovery of the money and complaint filed under Section 138 of the N.I. Act by itself is no ground to quash the proceedings in the complaints filed by the appellant herein. When cheating and criminal conspiracy are alleged against the accused, for advancing a huge sum of Rs.9 crores, it is a matter which is to be tried, but at the same time the High Court has entered into the disputed area, at the stage of considering the petitions filed under Section 482, Cr.P.C. It is fairly well settled that power under Section 482 Cr.P.C. is to be exercised sparingly when the case is not made out for the Crl.A.@ SLP(Crl.)Nos.6115-6117/2017 offences alleged on the reading of the complaint itself or in cases where such complaint is filed by way of abuse of the process. Whether any Schedules were appended to the agreement or not, a finding is required to be recorded after full fledged trial. Further, as the contract is for the purpose of procuring the land, as such the same is of civil nature, as held by the High Court, is also no ground for quashing. Though the contract is of civil nature, if there is an element of cheating and fraud it is always open for a party in a contract, to prosecute the other side for the offences alleged. Equally, mere filing of a suit or complaint filed under Section 138 of the N.I. Act, 1881 by itself is no ground to quash the proceedings. While considering the petition under Section 482 of Cr.P.C., we are of the view that the High Court also committed an error that there is a novation of the contract in view of the subsequent agreement entered into on 08.11.2012. Whether there is novation of contract or not and the effect of such entering into the contract is a matter which is required to be considered only after trial but not at the stage *of considering the application under Section 482, Cr.P.C.”*

(ii)***S.Shajahan @ S.S.Chakravarthy v. State rep. by the Inspector of Police and another*** reported in ***2022 (3) MWN (Cr.) 625***, wherein, the Hon'ble Supreme Court in para no.24 held as follows:

> *“24. The Petitioner-s contention to quash the charge sheet in C.C.No.5211 of 2020 on the file of the learned Metropolitan Magistrate, Special Court for Central Crime Branch, CBCID cases arising out of Metropolitan Area, Egmore, Chennai cannot be accepted in the light of the objection by the learned Counsel for the second Respondent/De~facto Complainant. Further, as per the reported ruling of the Hon-ble Supreme Court in the case of State of Haryana ~vs~ Bhajan Lal reported in 1992 Suppl.(1) SCC 335 relied on by the learned Counsel for the second Respondent/De~facto Complainant, what are all argued by the learned Senior Counsel for the Petitioner is to be considered as valuable defence that cannot be considered by this Court exercising discretion/extraordinary power of the High Court under Section 482 of Cr.P.C. It is to be considered only during trial in the criminal case before the trial Court on appreciation of the evidence which cannot be a criteria to quash the charge sheet. Therefore, in the light of the vehement objection by the learned Counsel for the second Respondent/De~facto Complainant, the submission of the learned Senior Counsel for the Petitioner is rejected and the submission of the learned Counsel for the second Respondent/De~facto Complainant is accepted.”*

20.On careful reading of the aforesaid judgment, it is clear that the power under Section 482 of Cr.P.C., should be exercised when the case is not made out on the reading of the complaint itself or in cases where such complaint is filed by way of abuse of process of law. Though the obligations arising out of a contract are of civil nature, if there is an element of cheating and fraud, it is always open for a party in contract to prosecute other side for offence alleged. In the case on hand also according to the complaint, some altercations were made in the amount paid by the petitioner to the China company and records were manipulated through whatsapp. Thereby the said case laws are squarely applicable to the present facts of the case.

21.According to the defacto complainant, the petitioner created the documents and the same was sent through whatsapp to him and also created documents. Therefore in the above circumstances, the said offences are caused through documents and hence, the trial Court has to decide the matter after perusing all the records placed before the trial Court. This Court while exercising power under Section 482 of Cr.P.C., cannot go through all the records pertaining to final report and it is for the trial Court to decide the case on merits. It is admitted fact that so far no charges were framed by the trial Court. The petitioner can approach the trial Court by filing discharge petition,

P. DHANABAL,J.

Mrn

if necessary and the trial Court has to decide the same in accordance with law. Further the Hon'be Supreme Court has framed guidelines with regard to quash of FIR and charge sheet in the case of ***Neeharika Infrastructure Private Limited Neeharika Infrastructure Pvt. Ltd. v. State of Maharastra and Others*** reported in ***2021 SCC Online SC 315***. In view of the dictum laid down in the above said case, this Court is declined to quash the charge sheet at this stage and this Criminal Original Petition is dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

03.08.2023

NCC : Yes/No
Internet : Yes/No
Index : Yes/No
Mrn
To
1.The Judicial Magistrate No.II, Trichy.
2.The Inspector of Police,
City Crime Branch,
Trichy District.
3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P(MD).No.19222 of 2019