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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: 20.12.2023

\+ CRL.M.C. 3761/2017 & CRL.M.A. 15242/2017

PRAMOD AGGARWAL ..... Petitioner

Through: Mr. Manav Vohra, Mr. Anunay Mehta and Mr. Vimayak Thakur, Advs.

Versus

M/S ESPEE TRADING CORPORATION & ANR ..... Respondents

Through: Mr. Neeraj Kumar Jha, Adv. for R-2.

\+ CRL.M.C. 3765/2017 & CRL.M.A. 15249/2017

M/S RAMA PAPER MILLS LTD ..... Petitioner

Through: Mr. Manav Vohra, Mr. Anunay Mehta and Mr. Vimayak Thakur, Advs.

Versus

M/S ESPEE TRADING CORPORATION & ANR ..... Respondents

Through: Mr. Neeraj Kumar Jha, Adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The present petitions have been filed seeking quashing of order dated 21.10.2014 passed by the Ld. Metropolitan Magistrate, Tis Hazari Courts, Delhi in Complaint Case No.89 of 2004 (new number CC No.288799 of

2016) whereby the learned Metropolitan Magistrate summoned the petitioners to stand trial in the afore-mentioned complaint case filed by the respondent no.1. Two separate petitions have been filed, one by the company and another by its director, but the relief sought in both the petitions is identical.

2. A prayer has also been made in the petitions to set aside the order dated 24.05.2017 passed by the Court of Ld. ACMM, Central District, Tis Hazari Courts, New Delhi in CC No. 288799/2016, whereby the argument of the petitioners that the complaint is not maintainable on the ground that the respondent no.1 was not in existence, therefore, no authorised representative of the respondent no.2 could have instituted the complaint on its behalf, was rejected.

3. The brief facts of the case are that the petitioner in CRL.M.C. 3761/2017 is the Managing Director of the petitioner company in CRL.M.C. 3765/2017. A complaint was filed by the respondent no.1 through its authorised representative Sh. Mukesh Kumar, in terms of Section 200 CrPC read with Section 156(3) CrPC invoking the offence under Sections 420/120B IPC. In the complaint, the petitioner - M/s Rama Paper Mills Limited was arraigned as accused no.1 and the petitioner-Pramod Aggarwal was arraigned as accused no.2. Besides the petitioners, the Shipping Corporation of India Ltd. and three other shipping lines were arraigned as accused nos. 3 to 6, in the complaint.

4. The allegations made in the complaint can be referred to from the complaint itself, the relevant part of which is extracted below for the sake of ready reference:

1. That complainant is in business of exporting waste paper *from USA and Europe to India for last more than 15 years.*

2. *That the accused No. 1 and 2 have been purchasing the materials from complainant since long and initially accused No, 1 and 2 were purchasing the materials only against Letter of Credit or on C.A.D. Basis and the goods or these shipments were being shipped with different major shipping lines here the accused No. 3 to 6. There is a provision with the shipping lines that if for some reasons the original bills of loadings are misplaced, lost or delayed, the shipping company can accept bank guarantee and release the cargo to the customer subject to the condition that customer has to provide the original bills of ladings within a specified time which is approximately one year.*

3. *That the accused No. 1 and 2, have developed relations with complainant and in the garb of some financial problems had started asking some credit facilities for the goods supplied since 1997. The accused No.1 and 2, have been since then making payments on running account basis and the accused No.1 and 2 had made a payment also on 06th March, 2001 and further committed that further payment will be made shortly. The accused No.1 and 2 have clearly admitted the dues against complainant.*

4. *That recently, the accused No.1 and 2, are not making any payment to complainant and whenever complainant calls the accused No.1 and 2 for the payment the accused No.1 and 2 somehow avoid the same on one pretext or other. Due to old relations complainant has been waiting in good faith for all these but complainant is totally astonished and aggrieved on knowing the fact that as many as 14 invoices have been taken away by accused No.1 and 2 in collusion with the other accused without the knowledge of complainant whereas all original bills of ladings for all these shipments are with complainant.*

5. *That the details of the said 14 shipments are as follows:-*

Sl.No.	Invoice No.	Date	Amount (in US$)
1.	3017	08/05/1997	5,209.65
2.	3059	30/05/1997	8,302.69
3.	3089	10/05/1997	4,724.58
4.	3093	28/05/1997	4,562.67
5.	3117	28/06/1997	8,853.91
6.	3120	11/06/1997	14,351.19
7.	3129	02/07/1997	8,677.52
8.	3405	07/12/1997	15,655.13
9.	3439	14/01/1998	3,876.57
10.	3834	18/10/1998	5,347.08
11.	51453	09/06/1997	18,640.34
12.	51454	28/06/1997	7,102.80
13.	51481	22/08/1997	7,520.20
14.	51536	12/02/1998	8,885.40
		TOTAL	1,21,709.73

6. *That as such all the accused have misappropriated and used complainant's material worth US $1,21,709.73 for your personal and illegal gain at the cost of complainant.*

7. *That complainant had tried to contact the accused No. 3 to 6 in this regard when the original papers were returned to it by its banker as the same were not paid by the accused No. 1 and 2's banker and their banker were sitting over the original documents for a long time. The enquiry from shipping company i.e. accused No. 3 to 6 has also yielded no result as they are not coming out with the facts as it will be exposing them about their criminal acts.*

8. *That complainant is still holding the original papers of bill*

of lading and no shipping company can release the goods even on false bank guarantee for an indefinite period of time and the shipping companies are not pressing to the customer for the original papers and it is a clear indication that all accused are have a common and criminal intention with a clear collusive mind to defraud complainant for an amount of US$ 1,21,709.73. All accused have intentionally and with full knowledge have misappropriated complainant's material worth US$ 1,21,709.73 and have kept complainant in dark and have committed clearly series of offences e.g. criminal misappropriation of funds, misappropriation of funds, breach of trust, criminal breach of trust, cheating, fraud, forgery and other provisions of law.

9. That all accused are jointly and severally liable for all the losses inflicted on complainant and also liable for exemplary damages to the tune of equivalent amount of the dues of complainant and all the accused are liable to be prosecuted for their clear collusive criminal acts and misdeeds.

5. In brief the case set out in the complaint is that the petitioner-company was the purchaser of materials from the complainant and had a long standing business relationship spanning from the year 1992 to the year 2001. It supposedly got released 14 consignments from 08.05.1997 to 12.02.1998 from the concerned shipping lines without making payment to the Complainant for such consignments, since the original Bills of Lading for these shipments continues to be in custody of the complainant. While part payments for shipments were made by the petitioners/accused till 06.03.2001 and they committed that further payment would be made, however, no further payments were made by the petitioners/accused thereafter.

6. To be noted that in pursuance of the complaint dated 04.07.2003 initially filed by the complainant before the EOW, Crime Branch, the Delhi Police after thorough enquiry filed a closure report dated 13.10.2003, *inter alia,* concluding as

under:

i. complaint is only in relation to 14 bills during the period 1997-1998 whereas business was carried out till July 2001;

ii. dispute is only about payment of money; and

iii. the attorney of the Complainant who instituted the complaint was hardly aware of any facts of the matter.

iv. the matter was a civil dispute on the face of it.

7. However, the complainant subsequently filed the complaint under section 200 CrPC read with section 156(3) CrPC. After recording pre-summoning evidence, the learned Metropolitan Magistrate *vide* impugned order dated 21.10.2014 summoned the accused persons for the offence punishable under Sections 420/120B IPC.

8. At the outset, the learned counsel for the petitioner submits that the summoning order is not sustainable *inter alia* on the ground that the present matter is purely related to a business transaction giving rise to civil dispute which has been given a cloak of a criminal offence to recover the dues which were already settled or have become time barred due to non-initiation of any recovery proceedings within the prescribed period of limitation.

9. He submits that even if the allegations are taken on the face value, the same do not reflect any criminality. Elaborating further on his argument, the learned counsel submits that the complainant itself averred that there were long standing business relations between the parties. He submits that from a perusal of the complaint it is evident that since the year 1997, the petitioner/accused asked for credit facilities for the goods supplied and that the respondent no.1 had been accepting payments on *'running account basis'*.

10. He submits that the complaint clearly spells out that payments for consignments were made by the petitioners/accused as late as on 06.03.2001 and it was committed that further payments will be made shortly. There is thus, admission of liability by the petitioners/accused towards the respondent no.1/complainant.

11. He further submits that the distinction between 'mere breach of contract' and the 'offence of cheating' is fine one. According to the learned counsel, breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. He further submits that it has neither been pleaded nor is it borne out from the record that there was ever an intention on part of the petitioners to cheat the respondent no.1/complainant since the inception, therefore, an offence under section 420 IPC is not made out against the petitioners. In support of his submission, reliance has been placed on the decisions of the Hon'ble Supreme Court in ***Dalip Kaur vs. Jagnar Singh*** [(2009)14 SCC 696]; ***Uma Shankar Gopalika vs. State of Bihar & Another*** [(2005) 10 SCC 336]; and ***Vesa Holdings P. Ltd. & Ors. vs. State of Kerala & Ors.*** [(2015) 8 SCC 293].

12. He submits that it is not a situation whether the petitioners have not made the payments to the complainants. Elaborating further, the learned counsel submits that indenting agent of the complainant had entered into a settlement with the petitioners whereunder the dues of the petitioners were set off against the dues of the complainant and this settlement has also not been denied by the complainant, even the letter issued by the indenting agent in this regard has not been denied. The complainant has only questioned the authority of the said indenting agent to enter into a settlement.

13. He further submits that the complainant, at the time of filing of the complaint was a non-existent entity and had already been dissolved by way of a proclamation of the Secretary of State published on 26.12.2001. To buttress his contention, he has drawn the attention of the Court to the certificate of dissolution which is attached to the present petition. He submits that the complaint is signed, and pre-summoning evidence has been led, by a person who cannot be said to be duly authorised since the complainant is a non-existent entity.

14. In the backdrop of aforesaid submissions, the learned counsel urges that the impugned summoning order dated 21.10.2014 along with the impugned order dated 24.05.2017 deserves to be set aside and quashed.

15. *Per contra*, the learned counsel for the respondent no.1 submits that the consignments were booked with the shipping lines against an issuance of Bills of Lading with an endorsement "to order". The Bills of Lading were submitted by the respondent no.1 with his banker for the delivery to consignee bank and the same could have been released in favour of the consignee i.e., the petitioners herein only on payment.

16. He submits that the very fact that the petitioners got the goods released in their favour without obtaining the Bills of Lading in collusion with shipping lines, shows commission of offences of criminal breach of trust and cheating. He submits that as the petitioners did not make the payments, the original Bills of Lading were returned by the consignee Bank to consignor Bank.

17. He further submits that the petition is not maintainable, in as much as, a statutory remedy under Section 245 CrPC is available to the petitioner to make plea of discharge in the event the evidence produced do not disclose

any offence.

18. He submits that the learned Trial Court has taken a view that even if the complainant company is no longer in existence, there is no legal impediment in continuing with the complaint.

19. He further submits that the indenting agent M/s Cellpap Agencies Pvt. Ltd., had no authority to receive the payments on behalf of the respondent no.1. He submits that the very fact the petitioner got the goods released fraudulently by forging the documents, has caused immense loss to the respondent no.1.

20. He submits that the petitioners have concealed a document i.e. reply dated 21.07.2003 wherein the petitioners have submitted to the police authority that the goods were released in lieu of payment by executing Bank Guarantee. According to the learned counsel, had the petitioner executed the Bank Guarantee, the respondent no.1 would have received the payment and the petitioners would have received the Bills of Lading i.e., title to goods. He, therefore, urges the Court to dismiss the petitions of the petitioners.

21. I have heard the learned counsel for the parties and have also perused the record.

22. At the outset, it may be noted that in the complaint though allegations of forgery have been made in a cursory manner but this issue cannot detain this Court any longer as neither the same have been elaborated in the complaint nor the learned Trial Court summoned the petitioners/accused to stand the trial in respect of the offence of forgery.

23. A perusal of the impugned order dated 21.10.2014 reveals that the petitioners/accused have been summoned to stand the trial only *qua* the

offences punishable under Section 420/120B IPC.

24. It is trite law that in order to attract provisions of Section 420 IPC it is not only required to be prove that the accused has cheated someone but also that by doing so, he has dishonestly induced the person who is cheated to deliver property. There are, thus, three components of this offence, i.e., (i) deception of any person, (ii) fraudulently or dishonestly inducing that person to deliver any property to any person, and (iii) *mens rea* of accused at the time of making inducement. It goes without saying that for the offence of cheating, fraudulent and dishonest intention must exist from the inception when the promise or representation was made.

25. The mere breach of contract cannot give rise to criminal prosecution under Section 420 IPC unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Reference in this regard may be had to the decision of three judge Bench of the Hon'ble Supreme Court in ***N. Raghavender vs. State of Andhra Pradesh, CBI: 2021 SCC OnLine 1232,*** where, the Hon'ble Supreme Court had an occasion to consider the ingredients necessary to prove a charge under Section 420 IPC and in that context, it was observed thus:

> *"46. Section 420 IPC, provides that whoever cheats and thereby dishonestly induces a person deceived to deliver any property to any person, or to make, alter or destroy, the whole or any part of valuable security, or anything, which is signed or sealed, and which is capable of being converted into a valuable security, shall be liable to be punished for a term which may extend to seven years and shall also be liable to fine.*
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> *xxxxxx xxxxxx xxxxxx xxxxxx*
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> *48. **It is equally well-settled that the phrase 'dishonestly' emphasizes a deliberate intention to cause wrongful gain or***

wrongful loss, and when this is coupled with cheating and delivery of property, the offence becomes punishable under Section 420 IPC. Contrarily, the mere breach of contract cannot give rise to criminal prosecution under Section 420 unless fraudulent or dishonest intention is shown right at the beginning of the transaction. *It is equally important that for the purpose of holding a person guilty under Section 420, the evidence adduced must establish beyond reasonable doubt, mens rea on his part.* ***Unless the complaint showed that the accused had dishonest or fraudulent intention 'at the time the complainant parted with the monies', it would not amount to an offence under Section 420 IPC and it may only amount to breach of contract.*** *"*

(Emphasis supplied)

26. Similar view was echoed earlier by the Hon'ble Supreme Court in ***Vesa Holdings (P) Ltd. vs. State of Kerala: (2015) 8 SCC 293***, the relevant para of which reads as under:

> *"12.* ***From the decisions cited by the appellant, the settled proposition of law is that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In other words for the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation.*** *Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Penal Code, 1860 can be said to have been made out.*
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> *13. 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***

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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. The criminal proceedings should not be encouraged when it is found to be mala fide or otherwise an abuse of the process of the court. The 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 the court and the High Court committed an error in refusing to exercise the power under Section 482 of the Criminal Procedure Code to quash the proceedings."*

(Emphasis supplied)

27. A careful reading of the complaint shows that the fundamental allegation made therein is that the accused nos.1 and 2 (the petitioners herein) had "taken away" as many as 14 invoices in collusion with other accused without the knowledge of the complainant whereas all original bills of lading of the said shipments are with the complainant. It can be seen that there is no allegation, whatsoever, to the effect that the petitioners/accused fraudulently or dishonestly induced the complainant/respondent or the shipping lines to deliver or part with the alleged 14 invoices by deception.

28. On the contrary, it is the complainant's own case that since 1997, the petitioner/accused had started asking some credit facilities for the goods supplied and since then they have been making payments on '*running account basis*'. It is also complainant's admitted case in the complaint that the petitioners/accused had made payment as late as on 06.03.2001 and further committed that remaining payment will be made shortly. This itself goes to show that there was never an intention on the part of the petitioner to

cheat the respondent/complainant since the beginning or inception of their business relationship. Even in the complaint, there is no specific allegation made that the petitioners/accused had an intention to cheat the complainant/respondent from the inception, which allegation is a *sine qua non* for constituting an offence under Section 420 IPC. Thus, the complaint does not disclose commission of an offence under Section 420 IPC.

29. As held by the Hon'ble Supreme Court in ***Vesa Holdings (P) Ltd.*** (supra), the criminal proceedings are not be encouraged when the same are found to be *mala fide* or otherwise amounts to an abuse of process of court. In the given facts of the present case, allowing the criminal complaint to continue would amount to an abuse of process of court.

30. The question of settlement arrived at between the petitioners and the indenting agent of the complainant need not be gone into as the same involves disputed question of fact. Likewise, the issue of locus of the so-called authorised representative to file a complainant on behalf of the non-existent entity does not merit any discussion as this Court has otherwise, held that the continuation of the criminal complaint would amount to an abuse of the process of court.

31. In view of the above, the petitions are allowed and accordingly, the complaint filed by the respondent no.1 against the petitioners, as well as, the summoning order passed therein, along with all proceedings arising from the summoning order, are quashed and set aside.

VIKAS MAHAJAN, J

DECEMBER 20, 2023/dss/MK