



Crl.O.P.No.3087 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :25.07.2024

Pronounced on :01.08.2024

CORAM:

THE HONOURABLE DR JUSTICE G.JAYACHANDRAN

Crl.O.P.No.3087 of 2024

and

Crl.M.P.No.2245 of 2024

1.C.Y.Sathyanarayanan

2.Indira Devi

.. Petitioners/

/versus/

1.The State rep by the
Inspector of Police,
Inspector of Police,
The Central Crime Branch-II,
Egmore, Chennai,
Chennai 600 007.

.. 1st respondent/
Compalinant

2.Mr.Thulasi Krishnan

..Respondent/Defacto
complainant

Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records and quash the proceedings initiated by the 1st respondent police in Crime No.9 of 2024 pending investigation on the file of the 1st respondent police.



Crl.O.P.No.3087 of 2024

For Petitioners :Mr.M.Velmurugan
For R1 :Mr.S.Udaya Kumar
Govt.Advocate(Crl.Side)
For R2 :Mr.R.Srinivas, Senior Counsel for
Mrs.V.Myhili Srinivas

ORDER

The petitioners herein are son and mother. They are the Directors of the company by name M/s V.T.S.Enterprises India Private Limited, which deals with spices and other food related consumables. One Mr.Thulasi Krishnan, S/o Sukumar, has given a complaint to the Commissioner, Chennai City against the petitioners and the same has been forwarded to CCB-I for investigation for the alleged offences under Sections 406, 420 r/w 120(B) and 34 of IPC. The said complaint in Crime No.9 of 2024 is sought to be quashed in the above Criminal Original Petition.

2. The sum and substance of the complaint, which is impugned in this petition to quash is that one Mr.Periyathambi, broker, introduced the first petitioner, Sathyanarayanan and his wife Indira Devi to the



Crl.O.P.No.3087 of 2024

WEB COPY

complaint as the Directors of M/s V.T.S.Enterprises India Private Limited, who are successful bidders in the tender floated by the Government of Tamil Nadu for supply of Pongal kit. They sought for supply of materials like turmeric powder, chilli powder, dhaniya powder, tamarind, mustard, jeera, pepper etc., The complainant, his wife and father Sukumar dealing with these products under the name and style of P.S.M.Viswanatha Chetty & Co., Sri Adhiparasakthi and Co., and Sri Bhagyalakshmi Trading and Co., agreed to supply the materials on being prima facie satisfied that the petitioners firm have good repute in the trade circle.

3. The petitioners represented that their relatives and friends are benami of Ministers of Tamil Nadu Government and they are the successful bidders for supply of materials required for pongal kit and therefore, on behalf of the benami, they want to procure materials to supply the Government. Impressed upon their representation, the complainant agreed to supply goods worth about Rs.16,27,14,120/-. When the complainant sought for payment of 50% advance, the petitioners gave photocopy of their house property document and said that they have availed loan in LIC and therefore, the original is with LIC.



Crl.O.P.No.3087 of 2024

Believing their words, the complainant retained photocopy of the property as security and supplied goods before 25th December 2021 as per the agreement.

4. The petitioners except paying the initial payment on Rs.2,42,00,000/- failed to pay the balance amount. On repeated demand they returned goods worth Rs.3,25,76,294/-. Still, balance of Rs.9,92,37,246/- payable and for that on 15.11.2022 the petitioners gave four cheques each for Rs.1 crore drawn at Kotak Mahindra Bank where their account is maintained and one cheque for Rs.1crore dated 15.12.2022. On the date of the cheque, when the complainant was supposed to present it for collection, the petitioners requested three months time to honour the cheque. After three months, when the cheques were presented for collection, the same returned as 'insufficient fund'.

5. In this regard, a complaint was given to the Commissioner of Police on 24.03.2023. The petitioners appeared for enquiry and promised to pay the money. Hence, the complaint was closed. Thereafter, when



Crl.O.P.No.3087 of 2024

they were contacted for payment of Rs.9,92,37,246/- they paid only Rs.15,00,000/- and continued to evade the payment of balance. When the complainant insisted for payment, the petitioners started threatening the complainant with dire consequence.

6. The learned counsel appearing for the petitioners submits that the dispute between the parties arising out of contract for supply of goods. The goods sold by the complainant was found defective and not in terms of the agreement. The complaint on the face of it bristles with falsehood and suppression of facts. The petitioners 1 and 2 are not husband and wife as stated in the complaint. They are mother and son. The second petitioner is the house wife and she has nothing to do with the affairs of the company by name M/s V.T.S. Enterprises India Private Limited, in which the petitioner is the Managing Director.

7. The first petitioner and one Sukumar the father of the complainant are known to each other since they are in the same trade and used to participate in the tenders floated by Government of Tamil Nady for supply of essential commodities and other consumables. During the



Crl.O.P.No.3087 of 2024

end of 2021 for supply of Pongal Kit for the card holders, Government floated tender in which Sukumar the father of the defaco complainant participated but he was not a successful bidder.

8. The said Sukumar, who had already accumulated consumables expecting the order from the Government sought the help of the first petitioner to arrange for selling his product to the successful bidders and assured to supply the required quantity as per the specification in time. Accordingly, the first petitioner believing the promise made by Sukumar that he will supply the required quantity of material within the time frame, gave work orders to Sukumar for supply of product before 31.12.2021 which was the last date fixed by the Government of Tamil Nadu for supply of material. The said Sukumar after making initial supply, raised the price more than 20% and also supplied substandard quality. Being inferior in quality, goods worth more than Rs.3 crores was returned by the Government and the same was sent back to Sukumar. By not supplying the goods within the time frame, the successful bidders and the petitioner were put to heavy loss. The successful bidders were not able to receive money for the goods supplied



Crl.O.P.No.3087 of 2024

WEB COPY

from the Government within the time frame. In turn, the petitioner was not able to pay Sukumar. This being purely a civil dispute and the default arose due to the default of the complainant's father, the earlier complaint given against this petitioner was enquired by CCB Team-1 and closed as civil dispute on 12.04.2023. Suppressing facts for the same transaction, the petitioner had given second complaint to the Commissioner of Police, which was forwarded to CCB-I and without making any preliminary enquiry, the Inspector of Police has registered the complaint and summoned the petitioners for enquiry, though on the face of records, it is purely civil transaction.

9. The learned counsel appearing for the petitioners further submitted that the dispute regarding supply of inferior quality of the product, the belated supply and unilateral increase of the product price had cumulatively caused heavy loss to the petitioners. Whereas, suppressing all these facts, the complaint been filed. Even in the said complaint, except making false allegation of cheating, there is no ingredient to substantiate the offence of cheating. As a trader the



Crl.O.P.No.3087 of 2024

petitioners believing the words of the complainant's father issued the work order and goods were taken delivery with the knowledge of the complainant that the goods are meant for the successful bidder in the tender floated by the Government and the payment will be made only after satisfaction of the quality of the product and receiving the payment from the Government.

10. Giving a criminal colour to a pure civil transaction and after failed in his first complaint which was registered in C.S.R.No.213 of 2023 on the file of C1-Flower Bazaar Police Station and closed after investigation, the second complaint is given on the same set of facts to the Commissioner of Police.

11. According to the petitioners, Memorandum of Understanding was entered on 19.10.2022 between the wife of the defacto complainant and the first petitioner. 10 cheques bearing Nos. 000123 to 000132 for a total sum of Rs.10,20,00,000/- was handed over to the complainant by the first petitioner. Thereafter, the first petitioner has paid more than Rs.32,50,000/- to the complainant company through



Crl.O.P.No.3087 of 2024

RTGS between December 2022 to January 2023. As and when the vendor to the Government has received the payment, the same has been transferred to the complainant. The complainant had given a complaint to the Commissioner of Police suppressing all the facts including payment of Rs.5 lakhs to Sri Bhagyalakshmi Trading and Co., on 18.08.2023; Rs.5,00,000/- to PSM Viswanathan Chetty and Co on 10.11.2023. Rs.5,00,000/- to Sri Adhi Parasakthi and Co on 11.10.2023 and another Rs.5,00,000/- to Sri Adhi Parasakthi and Co, on 21.11.2023 through IMPS Mode.

12. Per contra, the learned Senior Counsel appearing for the complainant contended that the earlier complaint in C.S.R.No.213 of 2023 was closed by the Flower Baazar on erroneous reason and the same was sought to be interfered by giving a representation to the Commissioner of Police following the guidelines laid by the Hon'ble Supreme Court in *Lalitha Kumari case*.

13. Having considered the criminality involved, the police has



Crl.O.P.No.3087 of 2024

WEB COPY

registered the case and taken up for investigation. The conduct of the petitioner right from the inception was of the habit of making misrepresentation that they are the successful bidder in the tender floated by the Government of Tamil Nadu and induced the complainant to supply the materials. A new reason is invented for the wilful default for payment towards the supply of material worth more than Rs.16 crores. Till date, only less than Rs.4 crores paid by the petitioner and Rs.3.25 crores goods were returned alleging that they are inferior in quality. The cheques issued without fund enhances the case of the complainant about the deceptive intention of the petitioners. There are sufficient material to investigate the commission of cognizable offence. Hence, the complaint can not be quashed on the premise that it is purely a civil dispute.

14. In support of his submissions, the learned Senior Counsel appearing for the complainant relies upon the invoices for the goods supplied and cheques issued and the memorandum of understanding dated 19.10.2022.

15. The learned Government Advocate(Crl.Side) representing



Crl.O.P.No.3087 of 2024

State submitted that the investigation sofar conducted reveals that the Government floated tender during the end of 2021 for supply of material like spices and other food related consumables for supply pongal kit to the beneficiaries/family card holders. The earlier complaint registered in C.S.R.No.213 of 2023 was closed by Flower Bazzar Police Station on being satisfied that the complaint is purely a civil dispute and the parties agreed to settle their dispute through civil Court. He further submitted that the complaint given to the Commissioner of Police has been taken up for investigation to find out whether there was any deceptive intention on the part of the petitioners while placing supply order with the complainant company. In view of the interim stay in Crl.O.P.No.3087 of 2024 and Crl.M.P.No.2245 of 2024 dated 13.02.2024, the investigation could not be proceeded.

16. In response, the learned counsel appearing for the petitioners submitted that after lodging the complaint suppressing the facts and stay of the investigation, the defacto complainant misused the cheques given to them on certain conditions and presented it for collection. Apprehending that the defacto complainant may misuse those



Crl.O.P.No.3087 of 2024

cheques, the petitioners have instructed their Bank to stop the payment.

Accordingly, the payment was stopped and the defacto complainant has initiated complaint under Section 138 of NI Act for dishonour of these cheques. While so, for the very same cause of action, the complaint been filed. Therefore, for that reason also the complaint is liable to be quashed.

17. The learned Senior Counsel appearing for the complainant in response to the last submission, claims that initiating proceedings under Section 138 of NI Act will not prohibit the complainant from initiating criminal prosecution for cheating and breach of trust.

18. Heard the learned counsel appearing for the petitioners, the learned Government Advocate (Crl.Side) appearing for the first respondent and the learned Senior counsel appearing for the 2nd respondent. Perused the material available on record.

19. The reading of the complaint shows that the petitioners company and the complainant's company are involved in trading consumables like turmeric powder, chilli powder, dhaniya powder,



Crl.O.P.No.3087 of 2024

WEB COPY

tamarind, mustard, jeera, pepper etc. The Government of Tamil Nadu had floated tender for supply of pongal kits containing the above consumable goods for distribution to the cardholders during pongal festival of the year 2022. In the complaint it is clearly stated that the goods about worth Rs.16 crores supplied to the petitioners company under invoice based on order issued. The petitioners claim that they in turn sold it to the successful bidder of the tender who are the benami's of the Ministers.

20. It is admitted in the petitioner that they paid advance of Rs.2,42,00,000/- and goods worth about Rs.3,25,72,294/- was returned to the complainant. The cheques issued for payment of the balance amount with interest were not presented for realisation at the request of the petitioners.

21. Thereafter, the parties have entered into MOU on 19.10.2022 agree to pay the balance in instalment. After institution of this complaint, the defacto complainant, Thulasi Krishnan as Proprietor of M/s V.T.S.Enterprises India Private Limited has caused legal notice to the petitioners on 09.07.2024 stating that the cheque No.000157 dated



Crl.O.P.No.3087 of 2024

24.0.2024 issued to him for a sum of Rs.3,58,38,757/- was dishonoured with endorsement payment stopped by drawer. Similar notice has been issued by his mother Lakshmi as Proprietor of Sri Adhiparasakthi and Co for cheque bearing No.000158 dated 24.06.2024 for a sum of Rs.5,72,61,382/- and by the petitioner herein as proprietor of Sri Bakyalakshmi Trade and Co for cheque bearing No.000038 dated 24.06.2024 for a sum of Rs.28,36,687/-.

22. It is trite law that to prosecute a person for cheating, the ingredient of deceptive intention by inducing a person to deliver the property must be at the inception and intentional.

17. Section 415 of IPC reads as below:-

415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that



WEB COPY



Crl.O.P.No.3087 of 2024

person in body, mind, reputation or property, is said to “cheat”.

Explanation.— A dishonest concealment of facts is a deception within the meaning of this Section.

23. In the present case, from the content of the complaint, this Court finds that when the petitioners represented that they need consumables for supply to the Government, the complainant believing the representation had supplied goods worth Rs.16,27,14,120/-. Under the pretext that the goods supplied were of inferior quality, the petitioners had failed to pay about Rs.10 crores. There is no explanation where the goods worth about Rs.10 crores gone. The cheques issued to pay the balance also returned with endorsement 'payment stopped'. Thus, the intention to cheat from the inception is well disclosed in the complaint.

24. In *Randheer Singh v. State of Uttar Pradesh and others* reported in [(2021) 14 SCC 626], the Hon'ble Supreme Court has discussed in detail, when the High Court can exercise its inherent jurisdiction under Section 482 of Cr.P.C., to quash the complaint. Particularly if the alleged offence is under Section 420 of IPC, this



Crl.O.P.No.3087 of 2024

judgment says inherent jurisdiction of the High Court under Section 482 of Cr.P.C., though wide has to be exercised sparingly and carefully and with caution. Only when it is justified by the tests specifically laid down in the statute itself and in the earlier judgments of High Court like, Mohd. Ibrahim v. State of Bihar:[(2009) 8 SCC 751”(2009)3 SCC (Cri) 929; Paramjeet Batra v. State of Uttarakhand: [(2013)11 SCC 673:(2012)4 SCC (Cri)76]; Uma Shankar Gopalika v. State of Bihar :[(2005)10 SCC 336:(2006)2 SCC (Cri)49]; Vesa Holdings (P) Ltd., v. State of Kerala : [(2015) 8 SCC 293: (2015)3 SCC (Cri)498]; Robert John D'Souza v. Stephen V.Gomes [(2015)9 SCC 96: (2015) 3 SCC (Cri) 724]; and Kapil Agarwal v. Sanjay Sharma :[(2021)5 SCC 524:(2021)2 SCC (Cri) 634]. The Court should quash the complaint.

25. To decide this petition, it is suffice to apply the below observations made in Mohd. Ibrahim case cited supra.

“19. To constitute an offence under Section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived.

(i)to deliver any property to any person, or



Crl.O.P.No.3087 of 2024

(ii)to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).

20. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused.”

26. In the present case, the delivery of the goods was on the false and mis-leading representation by the petitioners that the material is for supply to Tamil Nadu Government. If those goods were meant for the successful bidder, then the petitioners should have stated to whom they supplied it. The ingredient of cheating and misrepresentation is found in the complaint. The subsequent conduct of the petitioners clearly reveals that they have no intention to pay for the goods sold to them. Therefore, the disclosure of facts attracts offences punishable under Sections 406 and 420 of IPC.



WEB COPY



Crl.O.P.No.3087 of 2024

27. In the result, this Criminal Original Petition is dismissed.

Consequently, connected Miscellaneous Petition is closed.

01.08.2024

Index:yes

Speaking order/non speaking order

Neutral citation:yes/no

ari

To

1. Inspector of Police, Inspector of Police, The Central Crime Branch-II,
Egmore, Chennai, Chennai 600 007.

2. The Public Prosecutor, High Court, Madras.



WEB COPY



CrI.O.P.No.3087 of 2024

Dr.G.JAYACHANDRAN,J.

ari

delivery Order made in
CrI.O.P.No.3087 of 2024
and
CrI.M.P.No.2245 of 2024

01.08.2024