BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.03.2024

CORAM

THE HON'BLE MRS.JUSTICE R.HEMALATHA

Crl.O.P.(MD) No.12982 of 2021
and
Crl.M.P.(MD) No.6669 of 2021

Geetha ... Petitioner

Vs.

1.State Represented by
Inspector of Police,
District Crime Branch,
Cr.No.16/2018,
Thoothukudi District.

2.M.Mala ... Respondents

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, 1973, to call for the records pertaining to the case in C.C.No.145 of 2020 on the file of the Judicial Magistrate Court No.IV, Thoothukudi and quash the same.

For Petitioner : Mr.K.Suresh

For R1 : Mr.M.Sakthi Kumar
Government Advocate (Crl. Side)

For R2 : Mr.I.Velpradeep

ORDER

Seeking to quash the final report in C.C.No.145 of 2020 on the file of the Judicial Magistrate Court No.IV, Thoothukudi, the present Criminal Original Petition is filed.

2. The case of the prosecution in a nutshell is as follows:

(i) One S.Murugan, who is the *de facto* complainant was running a business in the name and style of 'M/s.Insoorya Express Cargo' and is exporting goods from India to various countries. He died on 04.02.2019. The second respondent is his wife. The present petitioner (A1) is the wife of Balasubramani (A2). The second accused Balasubramani was running a business of export and import in the name and style of 'Srimathre Global Impex and Logistrics (P) Ltd.' The second accused Balasubramani approached the *de facto* complainant and requested the latter to export his goods. Accordingly, the goods were exported on various dates, for which, Invoices were raised from 20.08.2016 to 20.01.2017 through Air Freight and Sea Freight. The *de facto* complainant had also cleared central excise and customs for the second accused. The amount was paid by the second accused periodically from 2016. The second accused suddenly fell ill, as a result of which, he did not pay the balance amount of Rs.54,11,160/- which is due and liable to be paid by him to the *de facto* complainant.

(ii) According to the prosecution, the accused 1 and 2 with a dishonest intention utilized the said amount for the medical treatment of the second accused. When the *de facto* complainant requested them to re-pay the amount, they handed over the following cheques:

Sl.No	Date	Cheque No.	Amount
1	06.02.2017	00079	Rs.10,39,100/-
2	25.02.2017	00081	Rs.21,86,030/-
3	05.03.2017	00082	Rs.21,86,030/-

(iii) When the above cheques were presented by the *de facto* complainant, the same were returned for the reason 'insufficient funds'. Thereafter, the *de facto* complainant went to the house of the accused and requested them to re-pay the amount. At that time, they threatened him with dire consequences.

(iv) Therefore, the *de facto* complainant lodged a complaint with the Sub-Inspector of Police, District Crime Branch, Thoothukudi on 30.07.2018, based on which, FIR in Crime No.16/2018 was registered by the Sub-Inspector of Police against the accused for the offences punishable under Sections 409, 415, 417, 418, 420 & 506(2) of IPC. After concluding investigation, the Sub-Inspector of Police filed a final report in C.C.No.145 of 2020 on the file of the Judicial Magistrate Court No.IV, Thoothukudi against the accused for the offences punishable under Sections 417, 420, 506(2), 120(b) and 406 of IPC. Sections were altered and alteration report was filed.

3. Mr.K.Suresh, learned counsel for the petitioner would contend that the present petitioner (A1) did not have any business transaction with the *de facto* complainant and that even if the entire final report is taken as true, no offence is made out against the present petitioner (A1). His further contention is that mere breach of contract cannot give rise to a criminal prosecution for cheating unless a fraudulent or dishonest intention is shown at the time of transaction i.e., when the offence is said to have been committed. In the instant case, even in the final report, the prosecution has stated that the second accused has been making payments periodically right from the year 2016 and subsequently, due to ill health, he did not pay the balance amount of Rs.54,11,160/-. The learned counsel for the petitioner, relying on the following decisions,

i. ***Hridaya Ranjan Prasad Verma and others*** Vs. ***State of Bihar and another***, reported in ***(2000) 4 SCC 168***.
ii. ***Chandran Ratnaswami*** Vs. ***K.C.Palanisamy and others***, reported in ***(2013) 6 SCC 740***.
iii. ***Binod Kumar and others*** Vs. ***State of Bihar and another***, reported in ***(2014) 10 SCC 663***.
iv. ***Joseph Salvaraj A*** Vs. ***State of Gujarat and others***, reported in ***(2011) 7 SCC 59***.

argued that,

i. distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Since in the instant case the present petitioner (A1) did not have any criminal intention to cheat the *de facto* complainant, the offence punishable under Section 420 of IPC would not be attracted.
ii. There is a growing tendency in business circles to convert purely civil disputes into criminal cases, since the civil law remedies are time-consuming and do not adequately protect the interest of the lenders/creditors. In such cases, it is the duty and obligation on the part of the criminal court to exercise a great deal of caution while dealing with the said cases.

iii. In the present case, upon looking at the allegations in the complaint, neither Section 406 nor Section 420 of IPC would be attracted.

iv. The *de facto* complainant did not file any private complaint before the Judicial Magistrate under Section 200 of Cr.P.C. against the second accused for an offence punishable under Section 138 of Negotiable Instruments Act. He also did not file any suit for recovery of money before the civil court. On the other hand, he is trying to give a criminal colour to the civil dispute.

5. Mr.I.Velpradeep, learned counsel for the second respondent (wife of the *de facto* complainant) would contend that the present petitioner (A1) even at the time of admitting the present Criminal Original Petition had admitted her lability to pay a sum of Rs.54,11,160/-, based on which, this Court granted interim stay on 06.09.2021. His specific contention is that since the present petitioner (A1) along with her husband (A2) had committed offences of cheating and also criminal breach of trust by not paying the balance amount of Rs.54,11,160/- and also threatened the *de facto* complainant with dire consequence, there cannot be any valid reason to quash the final report in C.C.No.145 of 2020 on the file of the Judicial Magistrate Court No.IV, Thoothukudi.

6. The first respondent police has filed a counter affidavit stating that he had done investigation in proper and impartial manner, examined 12 witnesses, collected various documents and filed the final report before the Judicial Magistrate Court No.IV, Thoothukudi. According to him, the petitioner (A1) had taken a very whimsy ground to quash the final report and therefore, the present Criminal Original Petition has to be dismissed.

7. Mr.M.Sakthi Kumar, learned Government Advocate (Crl. Side) appearing for the first respondent police would contend that the petitioner (A1) is the proprietor of 'Srimathre Global Impex and Logistrics (P) Ltd.' and therefore, she is also liable to be punished for the offences punishable under Sections 417, 420, 506(2), 120(b) and 406 of IPC.

8. At the outset, the petitioner is charged for the offences punishable under Sections 417, 420, 506(2), 120(b) and 406 of IPC. Therefore, it is imperative to examine the ingredients of the said offences and whether the allegations made in the complaint, read on their face, attract those offences under the Penal Code.

9. Section 406 of IPC deals with 'punishment for criminal breach of trust'. 'Criminal breach of trust' has been defined in Section Section 405 of IPC. It is relevant to extract hereunder Section 405 of IPC:

> **405. Criminal breach of trust** — Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".
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> **Explanation 1** —A person, being an employer of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution

to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Explanation 2 — A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

The essential ingredients of the offense of criminal breach of trust are,

(1) The accused must be entrusted with the property or with dominion over it,

(2) The person so entrusted must use that property, or;

(3) The accused must dishonestly use or dispose of that property or wilfully suffer any other person to do so in violation,

(a) of any direction of law prescribing the mode in which such trust is to be discharged, or;

(b) of any legal contract made touching the discharge of such trust.

10. "Entrustment" of property under Section 405 of the Indian Penal Code, 1860 is pivotal to constitute an offence under this. The words used are, 'in any manner entrusted with property'. So, it extends to entrustments of all kinds whether to clerks, servants, business partners or other persons, provided they are holding a position of 'trust'. A person who dishonestly misappropriates property entrusted to them contrary to the terms of an obligation imposed is liable for a criminal breach of trust and is punishable under Section 406 of the Penal Code.

11. The Hon'ble Apex Court in ***Sudhir Shantilal Mehta*** *Vs.* ***CBI*** reported in ***(2009) 8 SCC 1*** held that the act of criminal breach of trust would, *inter alia* mean using or disposing of the property by a person who is entrusted with or has otherwise dominion thereover. Such an act must not only be done dishonestly but also in violation of any direction of law or any contract expressed or implied relating to carrying out the trust.

12. As could be seen from the above, there are no ingredients to establish that there is a criminal breach of trust by the accused and therefore, provision of Section 406 of IPC would not be attracted as far as the present case is concerned.

13. Section 415 of IPC which defines 'cheating' is extracted hereunder.

> **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 person in body, mind, reputation or property, is said to "cheat".
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> ***Explanation***—A dishonest concealment of facts is a deception within the meaning of this section.

The essential ingredients of the offense of cheating are,

(1) deception of any person;

(2) (a) fraudulently or dishonestly inducing that person

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

(ii) to consent that any person shall retain any property; or

(b) intentionally inducing that person 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 person in body, mind, reputation or property.

14. Section 420 of IPC defines ‘cheating and dishonestly inducing delivery of property’ which 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.

Section 420 IPC is a serious form of cheating that includes inducement (to lead or move someone to happen) in terms of delivery of property as well as valuable securities.

15. The Hon'ble Apex Court in Prof.R.K.Vijayasarathy and Another Vs. Sudha Seetharam and Another, reported in (2019) 16 SCC 739 has held that the following ingredients are necessary to constitute the offence under Section 420 of IPC.

i. a person must commit the offence of cheating under Section 415; and
ii. the person cheated must be dishonestly induced to;
    a) deliver property to any person; or
    b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.

Thus, cheating is an essential ingredient for an act to constitute an offence under Section 420 IPC. 'Cheating' has been defined in Section 415 of IPC. Under the aforesaid section, it is inbuilt that there has to be a dishonest intention from the very beginning which is *sine qua* to hold the accused guilty for commission of the said offence. A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating. It is to be borne in mind that mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction. In the instant case, no criminal intention can be attributed upon the petitioner (A1). Even as per the prosecution, the present petitioner's husband (A2) has been making payments then and there. Therefore, the present petitioner (A1) cannot be held guilty of cheating. The final report also does not disclose the commission of offences under Sections 420 of IPC by the present petitioner (A1).

16. At the cost of repetition, it is to be born in mind that in order to attract the ingredients of Section of 406 and 420 IPC it is imperative on the part of the *de facto* complainant to *prima facie* establish that there was an intention on the part of the petitioner and/or others to cheat and/or to defraud the complainant right from the inception. Furthermore, it has to be prima facie established that due to such alleged act of cheating the *de facto* complainant had suffered a wrongful loss and the same had resulted in wrongful gain for the accused. In the absence of these elements, no proceeding is permissible in the eyes of law with regard to the commission of the offence punishable u/s 420 IPC.

17. Moreover, the matter appears to be a civil in nature and by any stretch of imagination, it cannot be said that there is cheating and dishonest inducement for delivery of property and criminal breach of trust by the present petitioner (A1). The civil dispute is sought to be given a criminal colour to get the money settled by the present petitioner (A1).

18. The contention of the learned counsel for the second respondent (wife of the *de facto* complainant) was that the present petitioner (A1) at the time of admission of the present Criminal Original Petition had admitted her liability and had also undertaken to pay the amount, and therefore, now, she cannot seek for quashment of final report without settling the said amount. It is pertinent to point out that the dispute between the parties is purely civil in nature and it is not known as to why the *de facto* complaint or his wife second respondent herein did not file any private complaint under Section 200 of Cr.P.C. before the concerned Judicial Magistrate for the offence punishable under Section 138 of Negotiable Instruments Act or any suit for recovery of money before the civil court.

19. It is not the case of the *de facto* complainant that he was put under imminent danger on account of the threat made by the present petitioner (A1) and her husband (A2) on 18.04.2018. It is settled law that empty threats without an intention of causing any bodily injury would not attract the offence punishable under Section 506 IPC.

20. In the circumstances, the final report in C.C.No.145 of 2020 on the file of the Judicial Magistrate Court No.IV, Thoothukudi is quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

13.03.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order
JEN

To:
1.The Judicial Magistrate No.IV,
Thoothukudi, Thoothukudi District.

2.The Inspector of Police,
District Crime Branch,
Thoothukudi District.

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

R.HEMALATHA, J.

JEN

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