BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.12.2024

CORAM

THE HONOURABLE **MR.JUSTICE N.ANAND VENKATESH**

Crl.O.P(MD)No.18476 of 2022
and
Crl.M.P(MD)Nos.12390 and 12391 of 2022

Nithya Subramani ... Petitioner

Vs

1. The Inspector of Police,
District Crime Branch Police,
Dindigul District, Dindigul.
(Crime No.39/2019).

2. K.Sivasubramani ....Respondents

PRAYER: Criminal Original petitions have been filed under Sections 439 (1) (b) of the Code of Criminal Procedure, to call for the records in connection with the impugned charge sheet in C.C No.300 of 2020 so far as the petitioner is concerned pending on the file of the learned Judicial Magistrate No.2, Dindigul and quash the same.

For Petitioner	: Mr.Sarvagan Prabhu S,
For R1	: Mr.S.Ravi Additional Public Prosecutor
For R2	: Mr.N.Marimuthu

ORDER

This petition has been filed to quash the proceedings in C.C No. 300 of 2020, pending on the file of the learned Judicial Magistrate No.2, Dindigul.

2.The second respondent gave a complaint to the first respondent stating that the second respondent is running a business with the name and style Siva Traders. The second respondent will purchase agricultural products from the farmers and based on the orders placed, these products will be transported/sold/exported for which the payment must be made to the second respondent and the second respondent in turn will make the payment to the farmers. For the period from 21.12.2017 to 13.06.2019, the accused persons had purchased Moringa seeds to the total tune of Rs. 6,91,37,825/-. However, the amount that was paid to the defacto complainant was only Rs.5,56,95,498/- . The remaining amount of Rs. 1,34,42,326/- was not paid by the accused persons. A cheque that was given by the accused person towards this amount was also dishonored with an endorsement 'stop payment'. Based on this complaint, an FIR came to be registered in Crime No.39 of 2019.

3.On completion of investigation, the police report was filed before the learned Judicial Magistrate No.II, Dindigul for the offence under Sections 406 and 420 IPC and the Court below took cognizance of the police report and issued process to the petitioner. The proceedings pending before the Court below has been put to challenge in the present quash petition.

4.This Court heard the learned Counsel appearing on either side on 03.12.2024 and passed the following order:

> *"Heard the learned counsel on either side*
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> *2. The learned counsel appearing on either side shall clarify as to how the defacto complainant received the total sum of Rs.5,56,95,498/- out of total amount of Rs. 6,91,37,825/-. It must be clarified as to whether this amount was paid by the petitioner or this amount was directly paid to the defacto complainant from the ultimate purchaser of the movable property.*
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> *3. The learned counsel appearing for the petitioner submitted that the goods that were sent by the defacto complainant after collecting the same from the farmers was exported to foreign countries and one such consignment that was sent was out right rejected on the ground that the goods were of inferior quality. The documents in this regard was also be placed before this Court along with the communication which the petitioner had with those foreign purchases.*
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> *4. Registry is directed to post this case on 10.12.2024."*

5.When the matter was taken up for hearing today, it was clarified by both sides that the amount was received by the defacto complainant directly from the account of the petitioner and not from the ultimate purchaser of the product.

6.The learned Counsel for the petitioner placed reliance upon certain invoices that was raised and the e-mail communication that took place between the petitioner and the ultimate purchaser, where, there was a complaint on the quality of products that was supplied and as a result, the amount was not paid to the petitioner.

7.The learned Additional Public Prosecutor raised objections for relying upon the above documents on the ground that those are the documents that are produced on the side of the defence and the same cannot be taken into consideration by this Court at the time of dealing with the quash petition and the only documents/materials that can be taken into account are the statements recorded by the respondent police and the materials relied upon by the respondent police while laying the police report.

8.This Court has carefully considered the submissions made on either side and the materials available on record.

9.The undisputed fact in the present case is that the defacto complainant was collecting the Moringa seeds from the farmers and was supplying the same to the ultimate purchasers and every time, the payment was made to the defacto complainant only from the bank account of the petitioner. The transaction had taken place for the period from 21.12.2017 to 13.06.2019. The dispute arose insofar the non-payment of a sum of Rs. 1,34,42,326/. Both sides have agreed that the petitioner has paid a sum of Rs.5,56,95,498/- out of the total amount of Rs.6,91,37,825/-.

10.Insofar as the offence of cheating is concerned, it is now too well settled that the intention to cheat must be proved from inception and such intention cannot be gathered in the middle of a transaction. It is also settled that a breach of contract also cannot constitute an offence of cheating.

11.It is not the case of the defacto complainant that the petitioner was intending to cheat the defacto complainant and consequently, the farmers also by taking the agricultural product and not paying any amount to them. In other words, it is not the case of the defacto complainant that right from the inception, no payment was forth coming from the petitioner. The problem arose in a particular transaction where a sum of Rs. 1,34,42,326/- became due and payable by the petitioner. The only question is as to whether the non payment of this amount will constitute an offence of cheating. This non-payment has arisen in the course of the transaction at a particular time and therefore, the intention to cheat cannot be gathered at a later stage of the transaction. There is a famous adage that hard facts makes bad law. In the case in hand, the agricultural produce was received from the farmers and therefore, the non-payment of the amount will ultimately affect the farmers. However, that by itself cannot be a determining factor when the Court deal with the facts of the case and sees if the offence of cheating and criminal breach of trust has been made out.

12.The materials that have been collected by the police in the course of investigation only shows that the non payment of the amount had arisen at a later stage in the course of transaction. It is not necessary for this Court to see as to why such a contingency had arisen. On the one hand the petitioner is saying that the products that were sent was of defective quality and therefore, payment was not made by the ultimate supplier. On the other hand, the second respondent is saying that those products were properly sent to the ultimate purchaser and the petitioner after having received the amount did not pay the second respondent and consequently, the second respondent was not able to make the payments to the farmers. It is not necessary for this Court to get into this issue since it is purely factual in nature. What is required to be seen is as to whether on the given facts of the case, an offence of cheating and criminal breach of trust has been made out.

13.This Court holds that the transaction in question is a pure business transaction between the petitioner and the second respondent. Ultimately, this business transaction has led to a money dispute. Hence the dispute is purely civil in nature and an attempt has been made to give a criminal color. That apart, even if the materials collected by the police are taken as it is, the offence of cheating and criminal breach of trust are not made out. The other issue is as to whether offence of cheating and criminal breach of trust can coexist in a given case, was considered by the Apex Court in the case of ***Delhi Race Club (1940) Limited and others Vs. State of Uttar Pradesh and another*** reported in ***2024 SCC OnLine SC 2248***. The relevant portions are extracted hereunder:

> *"26. Further, in both the aforesaid sections, mens rea i.e. intention to defraud or the dishonest intention must be present, and in the case of cheating it must be there from the very beginning or inception.*
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> *27. In our view, the plain reading of the complaint fails to spell out any of the aforesaid ingredients noted above. We may only say, with a view to clear a serious misconception of law in the mind of the police as well as the courts below, that if it is a case of the complainant that offence of criminal breach of trust as defined underSection 405of IPC, punishable underSection 406of IPC, is committed by the accused, then in the same breath it cannot be said that the accused has also committed the offence of cheating as defined and explained inSection 415of the IPC, punishable underSection 420of the IPC.*
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> *28. Every act of breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of manipulating act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person may seek his remedy for damages in civil courts but, any breach of trust with a mens rea, gives rise to a criminal prosecution as well. It has been held inHari Prasad Chamaria v. Bishun Kumar Surekha & Ors., reported in (1973) 2 SCC 823 as under:*
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> *"4. We have heard Mr. Maheshwari on behalf of the appellant and are of the opinion that no case has been made out against the respondents underSection 420Penal Code, 1860. For the purpose of the present appeal, we would assume that the various allegations of fact which have been made in the complaint by the appellant are correct. Even after making that allowance, we find that the complaint does not disclose the commission of any offence on the part of the respondents underSection 420Penal Code, 1860. There is nothing in the complaint to show that the respondents had dishonest or fraudulent intention at the time the appellant parted with Rs. 35.000/- There is also nothing to indicate that the respondents induced the appellant to pay them Rs. 35,000/- by deceiving him. It is further not the case of the appellant that a representation was made, the respondents knew the same to be false. The fact that the respondents subsequently did not abide by their commitment that they would show the appellant to be the proprietor of Drang Transport Corporation and would also render accounts to him in the month of December might create civil liability on the respondents for the offence of cheating."*

29. To put it in other words, the case of cheating and dishonest intention starts with the very inception of the transaction. But in the case of criminal breach of trust, a person who comes into possession of the movable property and receives it legally, but illegally retains it or converts it to his own use against the terms of the contract, then the question is, in a case like this, whether the retention is with dishonest intention or not, whether the retention involves criminal breach of trust or only a civil liability would depend upon the facts of each case.

30. The distinction between mere breach of contract and the offence of criminal breach of trust and cheating is a fine one. In case of cheating, the intention of the accused at the time of inducement should be looked into which may be judged by a subsequent conduct, but for this, the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction i.e. the time when the offence is said to have been committed. Therefore, it is this intention, which is the gist of the offence. Whereas, for the criminal breach of trust, the property must have been entrusted to the accused or he must have dominion over it. The property in respect of which the offence of breach of trust has been committed must be either the property of some person other than the accused or the beneficial interest in or ownership' of it must be of some other person. The accused must hold that property on trust of such other person. Although the offence, i.e. the offence of breach of trust and cheating involve dishonest intention, yet they are mutually exclusive and different in basic concept. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e., since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriated the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property. In such a situation, both the offences cannot co-exist simultaneously."

14.In the light of the above discussion this Court finds that the continuation of the criminal proceedings as against the petitioner would result in abuse of process of law and hence the same requires the interference of this Court in exercise of jurisdiction under Section 482 Cr.P.C and accordingly, the proceedings in C.C No.300 of 2020, pending on the file of the learned Judicial Magistrate No.2, Dindigul is quashed. It is left open to the second respondent to proceed further against the petitioner for recovery of money before the competent Court in accordance with law.

15.In the result, this criminal original petition stands allowed in the above terms. Consequently, the connected miscellaneous petitions are closed.

10.12.2024

Internet :Yes
Index :Yes/No
NCC :Yes/No
LR

To

1. The Judicial Magistrate No.2,
Dindigul.

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

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

N.ANAND VENKATESH, J.

LR

Crl.O.P(MD)No.18476 of 2022

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