IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.5556 of 2025and
Crl.M.P.Nos.3600 and 6343 of 2025

Srikanth Reddy ... Petitioner

Vs.

1.State rep by
The Inspector of Police,
BETA-VI, EDF -III,
CCB, Vepery,
Chennai 600 007.
(Crime No.89 of 2023)

2.A.Dharsan ..Respondents

PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records relating to the C.C.No.2915 of 2024 on the file of the learned Chief Metropolitan Magistrate Court, Egmore, Chennai and quash the same by allowing this Criminal Original Petition.

For Petitioner : Mr.M.Mohammed Riyaz

For R1 : Mr.A.Gopinath,
Government Advocate (crl.side)

For R2 : Mr.A.Natarajan,
Senior Counsel for
Mrs.A.Mathumathi

ORDER

This petition has been filed to quash the proceedings in C.C.No.2915 of 2024 on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai.

2. The case of the prosecution is that the defacto complainant, a power agent for M/s. Rishab Triexin LLP, lodged a complaint stating that in January 2019, M/s. Sujala and other directors, including the petitioner, introduced themselves as directors of M/s. Nandhi Irrigation Ltd. and M/s. SPY Agro Ltd. M/s. Sujala was responsible for managing the day-to-day affairs of both companies, including financial matters. Based on this introduction, the defacto complainant agreed to supply PVC raw

materials to M/s. Nandhi Irrigation Pvt Ltd. Business transactions began in February 2019, but from the start, the accused company frequently defaulted on payments and failed to maintain proper accounting, leading to discrepancies. Despite this, the defacto complainant continued supplying materials. While being so, on 13.10.2022, a meeting was held in Chennai where the directors of M/s. Nandhi Irrigation Pvt Ltd. acknowledged their payment delays and poor accounting practices. They assured the defacto complainant that payments would be made once the government cleared their bills and promised to cover costs if delays occurred. Based on these assurances, the defacto complainant continued supplying PVC materials, amounting to Rs.11,79,08,234.29/- as on 19.11.2022. When the defacto complainant demanded payment, the accused company rejected the claim, alleging the materials were of inferior quality and unsuitable for manufacturing pipes. The defacto complainant alleges that the accused unlawfully obtained the materials without paying, causing significant financial loss. As a result, the defacto complainant requested the first respondent to take action to recover the owed amount. On 17.04.2023, the second respondent lodged a formal complaint, leading to the registration of Crime No. 89 of 2023 under Sections 406, 420 r/w 34 of the IPC. The police investigated and filed a charge sheet.

3. The learned counsel for the petitioner submits that pursuant to the agreement between the second respondent and the petitioner, there has been a continuous business transaction since the year 2019. The petitioner placed orders for the supply of raw materials for the manufacturing of PVC pipes, and the total business between the parties amounted to more than Rs. 200 crores. According to the calculations of the second respondent, an outstanding amount of Rs. 11,79,08,234.29/- is due. In respect of this due amount, the second respondent has already approached the National Company Law Tribunal (NCLT), Hyderabad Bench, in C.P.No. (IB). No. 22/9/2023/HYD-II, seeking the appointment of an Insolvency Resolution Professional.

4. It is further submitted that the plea before the NCLT is based on the principal debt arising from the supply of materials for the period from 19.11.2022, amounting to Rs. 45,91,09,759/-, along with an opening

balance of Rs. 11,91,56,747/-. The total amount due is Rs. 578,266,506/-, of which Rs. 46,50,24,877/- has already been paid. Consequently, the remaining balance of Rs. 11,32,41,629/- has been sought for before the NCLT at Hyderabad. However, the second respondent suppressed this fact while lodging the present complaint. Therefore, it is submitted that the dispute pertains to a commercial transaction, and if there is any outstanding amount due from the petitioner, the second respondent ought to have approached the appropriate civil court for appropriate relief. No offence, as alleged by the prosecution, is made out as against the petitioner. In support of this contention, the learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in the case of ***Delhi Race Club (1940) Ltd., & others versus State of Uttar Pradesh & Another***, reported in ***CDJ 2024 SC 702***. The relevant portions are extracted hereunder:

> *"36. From the aforesaid, there is no manner of any doubt whatsoever that in case of sale of goods, the property passes to the purchaser from the seller when the goods are delivered. Once the property in the goods passes to the purchaser, it cannot be said that the purchaser was entrusted with the property of the seller. Without*

entrustment of property, there cannot be any criminal breach of trust. Thus, prosecution of cases on charge of criminal breach of trust, for failure to pay the consideration amount in case of sale of goods is flawed to the core. There can be civil remedy for the non-payment of the consideration amount, but no criminal case will be maintainable for it.

....

38.If it is the case of the complainant that a particular amount is duc and payable to him then be should have filed a civil suit for recovery of the amount against the appellants herein. But he could not have gone to the court of Additional Chief Judicial Magistrate by filing a complaint of cheating and criminal breach of trust."

5. Per contra, the learned Senior Counsel appearing for the second respondent submits that there are sufficient materials to attract the offences under Sections 406, 420 r/w 34 of the IPC as against the accused. Though the transaction appears to be a commercial one, the accused have specifically stated that the second respondent supplied defective materials and, as such, they deny any outstanding balance in respect of the materials supplied. That apart, when the second respondent

requested the accused to return the defective raw materials, the accused failed to comply. The learned Senior Counsel argues that from the very inception of the contract, the accused had the intention to cheat the second respondent, and therefore, the offences under Sections 406 and 420 of the IPC are clearly made out as against the accused. In support of this contention, the learned Senior Counsel relied upon several judgements which reads as follows:

> *"i.Rajesh Bajaj v.State NCT of Delhi and others, reported in, AIR 1999 SC 1216:*
>
> ....
>
> *10. It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions. One of the illustrations set out under Section 415 of the Indian Penal Code (illustrations "f") is worthy of notice now:*
>
> > *(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.*

11. The crux of the postulate is the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not. The complainant has stated in the body of the complaint that he was induced to believe that respondent would honour payment on receipt of invoices, and that the complainant realised later that the intentions of the respondent were not clear. He also mentioned that respondent after receiving the goods have sold them to others and still he did not pay the money. Such averments would prima facie make out a case for investigation by the authorities."

ii. Kamal Shivaji Pokarnekar v. The State of Maharashtra and others, reported in *AIR 2019 SC 847:*

9. ....A perusal of the complaint discloses that prima facie, offences that are alleged against the Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the Accused. Criminal complaints cannot be quashed only on the ground that the allegations made *therein appear to be of a civil nature. If the ingredients of the offence alleged against the Accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."*

6. Heard both sides and perused the materials placed before this Court.

7. On perusal of the records, it is revealed that there are a total of four accused, who are facing charges for offences under Sections 406, 420 of the IPC read with Section 34 of the IPC. The petitioner is arrayed as A2, who is none other than the son of A3 and A4. The first accused is the company, represented by its Directors, namely A2 to A4. According to the case of the second respondent, the accused had engaged in business transactions with the second respondent. In this regard, the accused had placed orders for the supply of raw materials to manufacture PVC pipes, specifically PVC resin, under invoices totaling Rs.578,266,506/-, of which the accused had paid a sum of Rs.46,50,24,877/-. There remains an outstanding balance of

Rs.11,32,41,629/-, which has not been settled, allegedly due to the raw materials supplied by the second respondent being found defective. Prior to lodging the present complaint, the second respondent had already initiated proceedings before the National Company Law Tribunal in C.P.No: (IB). No. 22/9/2023/HYD-II, which is still pending. Therefore, the transaction between the accused and the second respondent is essentially a commercial transaction. The accused are now facing charges under Sections 406, 420, read with Section 34 of the IPC. It is pertinent to extract the essential ingredients required to establish an offence punishable under Section 406 of the IPC. To make out a case for criminal breach of trust under Section 406, the following conditions must be met:

> *(i) Entrustment of the property or any dominion over property with accusation;*
> *(ii) The person entrusted dishonestly misappropriating or converting to his own use that property; or dishonestly using or disposing 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 causing sufferance to any other person so to do*

Admittedly, upon the placement of orders by the accused, the second respondent supplied raw materials for the manufacturing of PVC pipes. A due amount remains unpaid by the accused in respect of the materials supplied. In relation to this, the second respondent has also initiated proceedings before the National Company Law Tribunal, which are currently pending. Therefore, in light of the facts as alleged, there is no material to attract the offence under Section 406 of the IPC.

8. In order to constitute the offence under Section 420 of the IPC, there must be deception, i.e., the accused must have deceived someone. That apart, by such deception, the accused must have induced the person to act in a manner that they otherwise would not have, resulting in harm or damage. It is pertinent to extract the relevant provision under Section 420 of the IPC, which reads as follows:

> *"(i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;*

(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property."

On perusal of the statement and materials, it is evident that there are absolutely no ingredients to attract the offence under Section 420 of the IPC as against the accused. Therefore, the entire dispute between the second respondent and the accused is of a civil nature. In fact, the second respondent has already approached the National Company Law Tribunal for the adjudication of the remaining balance against the accused, and the matter is still pending. In this regard, it is relevant to rely upon the decision of the Hon'ble Supreme Court in the case of ***Delhi Race Club (1940) Ltd. & Others v. State of Uttar Pradesh & Another***, as stated supra.

9. The above judgment is squarely applicable to the case on hand, as it similarly involves a dispute regarding commercial transactions between the accused and the second respondent. That apart, on perusal of the complaint lodged by the second respondent, it is clear that the second respondent has categorically sought to recover the outstanding balance from the accused for the raw materials supplied. Therefore, the offences under Sections 406 and 420 of the IPC are not at all attracted, as there is an absence of deception, whether through false or misleading representation, dishonest concealment, or any other act, omission, or inducement to deliver property at the time the contract was entered into between the accused and the second respondent. As such, the first respondent lacks the power or authority to recover the money from the accused, let alone charge them with offences punishable under Sections 406 and 420 of the IPC. In fact, the second respondent has rightly approached the National Company Law Tribunal for appropriate relief. However, this Court finds that the judgments cited by the learned Senior Counsel for the second respondent are not applicable to the present case.

10. In view of the above, the proceedings in C.C. No. 2915 of 2024 on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai, cannot be sustained and is hereby quashed. Though the petition has been filed only by A3, in the interest of justice and to meet the ends of justice, the entire proceedings in C.C. No. 2915 of 2024, insofar as all the accused are also hereby quashed.

11. In light of the foregoing, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

02.04.2025

Neutral citation : Yes/No
Speaking/non-speaking order
shk

To

1.The Chief Metropolitan Magistrate Court, Egmore, Chennai

2.The Inspector of Police,
BETA-VI, EDF -III,
CCB, Vepery,
Chennai 600 007.

3.The Public Prosecutor,
Madras High Court.

G.K.ILANTHIRAIYAN, J.

shk

Crl.O.P.No.5556 of 2025 and
Crl.M.P.Nos.3600 and 6343 of 2025

02.04.2025

(1/2)