IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2025

CORAM:

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

Crl.O.P.No.9016 of 2025 and
Crl.M.P.No.5976 of 2025

1.Sujala
2.Sridhar Reddy ... Petitioners

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 Petitioners : Mr.M.Mohamed Riyaz

For R1 : Mr.R.Vinothraja,
Government Advocate (crl.side)

For R2 : No appearance

O R D E R

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, the directors including the petitioners, introduced themselves as directors of M/s. Nandhi Irrigation Ltd. and M/s. SPY Agro Ltd., and the first petitioner 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 petitioners submits that pursuant to the agreement between the second respondent and the petitioners, there has been a continuous business transaction since the year 2019. The petitioners 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 petitioners, 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 petitioners. In support of this contention, the learned counsel for the petitioners 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. Heard the learned counsel for the petitioners, the learned Government Advocate(crl.side) appearing for the first respondent and perused the materials placed before this Court.

6. 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 petitioners are arrayed as A2 & 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.

7. 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.

8. 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.

9. In view of the above, the proceedings in C.C. No. 2915 of 2024 cannot be sustained. Accordingly, the entire proceedings in C.C.No.2915 of 2024 on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai, are hereby quashed as against the petitioners.

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

25.04.2025

Neutral citation : Yes/No (½)
Speaking/non-speaking order
lok

G.K.ILANTHIRAIYAN, J.

lok

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

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(1/2)