

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 28-09-2007

CORAM

THE HONOURABLE MR.JUSTICE S.PALANIVELU

CRIMINAL ORIGINAL PETITION No.10321 OF 2007

Ponnusamy Selvamani

...

Petitioner

-vs-

1.State by  
Inspector of Police,  
Erode Town Police Station,  
Crime No.1307/2005.

2.K.K.Sengodan

...

Respondents

R-2 impleaded as per order of this Court,  
dated 03.07.2007, made in M.P.No.3/2007.

Petition under Section 482 of the Code of Criminal Procedure.

For petitioner : Mr.T.Murugesan,  
Senior Counsel,  
for M/s.V.Sairam & K.Magesh.

For respondent 1 : Mr.A.Saravanan,  
Govt.Advocate (Criminal Side).

For respondent 2 : Mr.R.Balakrishnan

O R D E R

This petition has been filed to call for the records in connection with F.I.R. in Crime No.1307 of 2005 on the file of first respondent and to quash the investigation.

2. Petitioner, who is the proprietor of "Amarnath Valmy", which is functioning in Paris, is accused in Crime No.1307 of 2005 on the file of first respondent police, for the offences under Sections 420 and 409 IPC, on the basis of a complaint lodged by the second respondent/de facto complainant, who is running M/s. Kaarthikai Trading Company in Erode.

3. The dispute between the parties is, payment towards despatch of Gada bags by the de facto complainant to the petitioner, to the value of Rs.18,59,000/-.

4. The gravamen of the F.I.R.goes thus :

Petitioner is a citizen of Paris, France. He was introduced to the second respondent by a friend. Petitioner represented him that he would sell the Gada bags at Paris, if the second respondent supplied the same, for which an order was placed on 20.03.2002. Believing the words of the petitioner, second respondent obtained the goods from various places on loan basis and consigned them on 28.03.2002 by ship. The goods were received by the petitioner, who sold them in Paris, but had not paid the value to the second respondent, as agreed. Whenever the second respondent asked the petitioner to pay money, the petitioner gave false promises, with an intention to cheat him. On 24.02.2005, the second respondent lodged a complaint, while the petitioner came down to India and stayed at Dindigul, but the complaint did not receive proper treatment. Thereafter, the petitioner returned back to France. By frantic efforts of the second respondent, the information was passed on to Chennai International Airport Immigration Office, by means of which, on 22.07.2005, the petitioner was apprehended at Chennai International Airport and entrusted with Erode District Crime Branch. However, no appropriate action was taken against him. Even though he agreed to pay the amount within ten days in the presence of the officials, he did not do so and left for France again. Hence, the complaint.

5. The quintessence of the contention of Mr.T.Murugesan, learned Senior Counsel for the petitioner, is that in the absence of necessary allegations as to attract the provisions of Sections 420 and 409 IPC in the F.I.R., it has to suffer quashment. It is also argued by him that it is not sufficient to show at the fag end of the transaction that there was intention on the part of the petitioner to cheat the de facto complainant, but the mala fide intention, if any, should be alleged and established from the inception, otherwise, no offence could be made out under Section 420 IPC. He also draws attention of this Court to various portions of the F.I.R., in which, according to him, only at the later point of transaction, the dishonest intention has been alleged by the respondent and since such allegation does not find place in the complaint as if it occurred at the beginning of the contract, the complaint loses its value.

6. Learned Government Advocate (Criminal Side) would assert the allegations found in the F.I.R. and argue that when prima facie materials are available on a reading of the F.I.R., even without ascertaining its genuineness or merits, there is no embargo for the investigating agency to take cognizance and act upon it and that the illuminating legal propositions would also support his view.

7. Learned counsel for the second respondent also advanced the arguments in tune with that of the learned Government Advocate.

8. In support of his contention, learned Senior Counsel for the petitioner placed much reliance upon the following decisions of the Hon'ble Apex Court :

(i) Hridaya Ranjan Prasad Verma and others v. State of Bihar and another, 2000 (4) Supreme Court Cases 168, in which, it was held as under :

"In determining the question, it has to be kept in mind that the 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. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating, it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

(ii) In Medchal Chemicals & Pharma (P) Ltd. v. Biological E.Ltd. and Others, 2000 Supreme Court Cases (Cri) 615, it is observed as follows :

"To exercise powers under Section 482 of the Code, the complaint in its entirety will have to be examined on the basis of the allegation made in the complaint and the High Court at that stage has no authority or jurisdiction to go into the matter or examine its correctness. Whatever appears on the face of the complaint shall be taken into consideration without any critical examination of the same. But the offence ought to appear ex facie on the complaint. The truth or falsity of the allegations would not be gone into by the Court at this earliest stage. Whether or not the allegations in the complaint were true is to be decided

on the basis of the evidence led at the trial. So the question is : Can it be said that the allegations in the complaint do not make out any case against the accused nor do they disclose the ingredients of an offence alleged against the accused or the allegations are patently absurd and inherently improbable so that no prudent person can ever reach to such a conclusion that there is sufficient ground for proceeding against the accused ?

The factual matrix would be relevant in the matter of assessment of the situation as to whether "civic profile" would outweigh the "criminal outfit"

(iii) In ALPIC Finance Ltd. v. P.Sadasivan and Another, 2001 Supreme Court Cases (Cri) 565, it is held as below :

"Here, the main offence alleged by the appellant is that the respondents committed the offence under Section 420 IPC and the case of the appellant is that the respondents have cheated him and thereby dishonestly induced him to deliver property. To deceive is to induce a man to believe that a thing is true which is false and which the person practising the deceit knows or believes to be false. It must also be shown that there existed a fraudulent and dishonest intention at the time of commission of the offence."

9. The Apex Court was of the view that when the contents of the complaint are harmoniously read, it should apparently show the commission of offence and no deep exploration is essential and that truth or falsity of the allegations need not be considered at the inception.

10. Guided by the principles formulated by the Supreme Court, it is to be held herein that if a person is said to have cheated another, his words should be believed by the latter and the former should have very well known that he was giving false promise.

11. In so far as the facts of the present case are concerned, the dishonest intention on the part of the petitioner could very well be borne out from the allegations in the F.I.R.

12. In the F.I.R., more than once, the de facto complainant has alleged that even while he entered into the transaction, he believed the words of the petitioner and that the subsequent conduct of the petitioner would show that even at the beginning of the transaction, the petitioner was having mala fide intention in his mind. The F.I.R. also goes to the effect that the petitioner tantalized the de facto complainant, stating



that he would sell the goods for a good price in Paris on 20.03.2002 itself. The F.I.R. further reads that reposing confidence on the petitioner, the de facto complainant secured goods from various places on loan basis and exported them to the petitioner. These allegations in the F.I.R. are the crux of the matter. The said allegations would very well show that even at the threshold of the transaction, the petitioner apparently entertained mala fide intention to cheat the de facto complainant.

13. As held by the Hon'ble Apex Court, truth or falsity of the allegations need not be gone into at the earliest stage and they have to be decided at the time of trial of the case, after appreciation of oral evidence on record.

14. The next limb of contention of the learned Senior Counsel for the petitioner is that the transaction was reportedly entered on 20.03.2002, but the F.I.R. was registered on 17.09.2005; hence, seeking civil remedy by the de facto complainant is barred by limitation and, therefore, he has initiated criminal proceedings against the petitioner. In other words, it is the contention of the learned Senior Counsel that having slept over for over three years, it is futile on the part of the de facto complainant to file a criminal complaint with allegations calling for a civil remedy, which too is time barred.

15. The said contention, in my standpoint, is not tenable, for the reason that the present complaint would not be barred by time, in view of the provisions of Section 468 Cr.P.C. and by virtue of penalty prescribed under Sections 420 and 409 IPC.

16. Merely because a civil remedy is available to a person in a matter against the other person, the contention that the criminal proceedings would not lie cannot be countenanced. Failure on the part of the second respondent to proceed on civil side for certain years is not an embargo for him to initiate criminal proceedings against the petitioners. Whether his claim under civil law is time barred or not is immaterial and it is his option to avail any of the remedies. Further, just because the claim under civil law got time barred, it could not at all be termed that criminal action would not follow.

17. For the foregoing reasons, this Court is of the considered opinion that no good ground is made out for quashing the F.I.R. in this case and also there is no legal obstacle for the respondents to proceed against the petitioner on the complaint, which contains prima facie

materials to initiate action against the petitioner. Therefore, this petition suffers dismissal and is dismissed. Consequently, the connected Criminal M.P.Nos.1,2 and 4 are closed.  
dixit

Sd/  
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1.The Inspector of Police,  
Erode Town Police Station,  
Erode.  
Crime No.1307/2005.

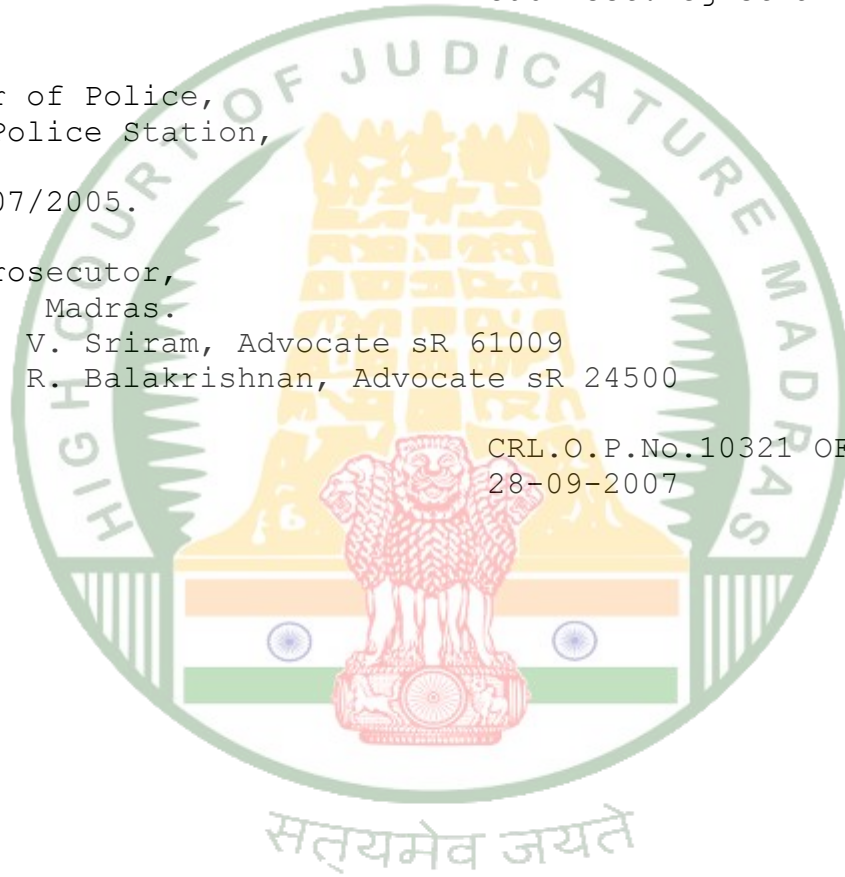
2.The Public Prosecutor,  
High Court, Madras.

+ One cc to Mr. V. Sriram, Advocate sR 61009  
+ One cc to mr. R. Balakrishnan, Advocate sR 24500

JRG (co)

sg 06/10/07

CRL.O.P.No.10321 OF 2007  
28-09-2007



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