



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE G.GIRISH

WEDNESDAY, THE 4TH DAY OF DECEMBER 2024 / 13TH AGRAHAYANA,

1946

CRL.MC NO. 4078 OF 2019

TO QUASH THE PROCEEDINGS AGAINST THE ACCUSED IN CC NO.1765 OF 2012 PENDING BEFORE THE JUDICIAL MAGISTRATE OF FIRST CLASS I, PERUMBAVOOR, ERNAKULAM DIST.

PETITIONER/ACCUSED:

SUJATHA AGGARWAL, AGED 44 YEARS
W/O.MANOHAR AGARWAL, PROPRIETOR, AGARWAL PLYWOOD INDUSTRIES, AGARWAL BHAVAN, D.NO.27/44/I/B, FIRST FLOOR, GOVERNORPET, BANDAR ROAD, VIJAYAWADA-2, ANDHRA PRADESH.

BY ADV P.T.JOSE

RESPONDENTS/COMPLAINANT:

1 STATE OF KERALA,
THROUGH SUB INSPECTOR OF POLICE,
PERUMBAVOOR POLICE STATION, PERUMBAVOOR,
ERNAKULAM DIST-683542,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

2 FRIENDS VENEERS,
X/142-A, ALLAPRA.P.O., PERUMBAVOOR-683543,
REPRESENTED BY ITS MANAGER SALIM,
S/O.K.K.VEEERAN, KARIMBANAKKIL HOUSE, ALLAPRA.

SRI SANGEETH RAJ, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 02.12.2024, THE COURT ON 04.12.2024 PASSED THE FOLLOWING:

**ORDER**

The sole accused in C.C.No.1765/2012 on the files of Judicial First Class Magistrate Court-I, Perumbavoor has filed this petition under Section 482 of the Code of Criminal Procedure to quash the proceedings against him in the said case.

2. The aforesaid case originated on a private complaint filed by the second respondent alleging the commission of offence under Section 420 I.P.C by the petitioner herein, which was forwarded to the police under Section 156(3) Cr.P.C. The allegation against the petitioner was that in violation of the terms of agreement dated 24.01.2002 with the second respondent for the payment of an amount of Rs.12,51,640/- as the cost of 39 consignments of veneer sent by the second respondent, the petitioner committed cheating by not making payment of the said amount inspite of repeated demands. It is alleged in the complaint that two cheques issued by the petitioner on 12.08.2002 and 16.08.2002 towards payment of the aforesaid liability, were returned by the bank with the endorsement 'funds expected, please present afterwards'. It is the further allegation in the complaint that the second respondent did



not present the cheque again believing the words of the petitioner, but the petitioner failed to make payment for the goods supplied by the second respondent.

3. In the present petition, the petitioner would contend that the nature of the transaction between the petitioner and the second respondent is of civil nature, and the offence of cheating as envisaged under Section 420 I.P.C is not attracted in the facts and circumstances of the case.

4. The second respondent did not choose to appear or contest the proceedings despite service of notice.

5. Heard the learned counsel for the petitioner and the learned Public Prosecutor representing the first respondent.

6. It is obvious from the original complaint filed by the second respondent as well as from the final report filed by the first respondent that the grievance of the second respondent is regarding the failure on the part of the petitioner to make payment of the amount agreed to be paid as the costs of the consignments of veneer sent by the second respondent from his establishment. Neither the original complaint nor the final report contain the necessary particulars to show that right from the very beginning



when the petitioner and the second respondent entered into the agreement on 24.01.2002, the petitioner was having the fraudulent and dishonest intention to avoid payment for the goods agreed to be sent by the second respondent. On the other hand, it is writ large from the various averments in the complaint that the issue involved is purely a breach of contract. Annexure-A4 notice produced from the part of the petitioner would go to show that the petitioner was having complaint about the substandard quality of the goods supplied by the second respondent. The said document further reveals that the petitioner had sent a demand draft of Rs.3,00,000/- against the payment of two cheques dated 12.08.2002 and 16.08.2002 which the second respondent had referred to in paragraph No.5 of the original complaint. Thus, it could be seen from the records of the case that the parties have reciprocal allegations levelled against each other in respect of breach of obligations of the terms of the agreement entered into by them. While the second respondent would allege the failure of the petitioner to make payment for the goods supplied, the petitioner would allege the supply of goods of substandard quality by the second respondent. At any rate, it is not possible to say that the



ingredients of the offence as defined under Section 415 IPC would be attracted in the facts and circumstances of the case.

7. It is well settled that the mere failure to perform a promise on the part of one of the parties to an agreement will not give rise to the offence of cheating as envisaged under Sections 415 & 420 IPC in the absence of materials to show that at the time of making the promise the accused had the fraudulent and dishonest intention to deceive the complainant or to induce him to do something which he would not otherwise do, and that such culpable intention right at the time of entering into an agreement cannot be presumed merely from his failure to keep the promise subsequently. So also, the mere mention of words 'defraud' and 'cheat' in the complaint is not sufficient to infer that the accused had dishonest intention right from the very beginning.

8. On this point, it is apposite to extract the following paragraphs from the judgment of the Hon'ble Supreme Court in **V.P. Shrivastava v. Indian Explosives Ltd., [(2010) 10 SCC 361]**.

"22. It is plain from a bare reading of the section that to hold a person guilty of cheating, as defined in Section 415 IPC, it is necessary to show that at the time of making the promise he had fraudulent or dishonest intention to retain the property



or to induce the person so deceived to do something which he would not otherwise do.

23. The ingredients required to constitute an offence of cheating have been succinctly laid down in Ram Jas v. State of U.P. [(1970) 2 SCC 740 : 1970 SCC (Cri) 516] as follows: (SCC p. 743, para 3)

"(i) there should be fraudulent or dishonest inducement of a person by deceiving him;

(ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or

(b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) in cases covered by (ii)(b), the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property."

(Hridaya Ranjan Prasad Verma v. State of Bihar [(2000) 4 SCC 168 : 2000 SCC (Cri) 786] , S.W. Palanitkar v. State of Bihar [(2002) 1 SCC 241 : 2002 SCC (Cri) 129] , Kuriachan Chacko v. State of Kerala [(2008) 8 SCC 708 : (2008) 3 SCC (Cri) 631])

24. Similar views were echoed in Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [(2000) 3 SCC 269 : 2000 SCC (Cri) 615] wherein it was observed that: (SCC p. 277, para 11)



"11. ... In order to attract the provisions of Sections 418 and 420 the guilty intent, at the time of making the promise is a requirement and an essential ingredient thereto and subsequent failure to fulfil the promise by itself would not attract the provisions of Section 418 or Section 420. Mens rea is one of the essential ingredients of the offence of cheating under Section 420. As a matter of fact Illustration (g) to Section 415 makes the position clear enough to indicate that mere failure to deliver in breach of an agreement would not amount to cheating but is liable only to a civil action for breach of contract..."

25. It is well settled that in order to constitute an offence of cheating, it must be shown that the accused had fraudulent or dishonest intention at the time of making the representation or promise and such a culpable intention right at the time of entering into an agreement cannot be presumed merely from his failure to keep the promise subsequently. (Also see Hira Lal Hari Lal Bhagwati v. CBI [(2003) 5 SCC 257 : 2003 SCC (Cri) 1121] .)"

9. As far as the present case is concerned, it is apparent from the nature of the contentions raised by the parties, as well as from the facts and circumstances borne out of the records that an issue of purely civil nature has been stretched and moulded to make it appear that the offence of cheating is involved. Thus, this is a fit



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case where the extraordinary powers of this Court under Section 482 Cr.P.C has to be exercised to terminate the proceedings.

In the result, the petition stands allowed. All the proceedings pending before the Judicial First Class Magistrate Court, Perumbavoor, in CC No.1765/2012, are hereby quashed.

(sd/-)

G. GIRISH, JUDGE

jsr/DST



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APPENDIX OF CRL.MC 4078/2019

PETITIONER ANNEXURES

- ANNEXURE A1** **A CERTIFIED COPY OF THE M.P.671/04 FILED BY THE 2ND RESPONDENT.**
- ANNEXURE A2** **A CERTIFIED COPY OF THE FIR NO.223/04 DATED 24.3.2004 FILED BY THE 2ND RESPONDENT.**
- ANNEXURE A3** **A CERTIFIED COPY OF THE FINAL REPORT IN C.C.1765/2012 FILED BEFORE THE JFCM COURT, PERUMBAVOOR.**
- ANNEXURE A4** **A TRUE COPY OF THE LETTER DATED 19.3.2005 WRITTEN BY THE PETITIONER TO THE SUPPLIERS.**
- ANNEXURE A5** **A TRUE COPY OF THE STAY ORDER DATED 22.5.2019 OF THE HON'BLE HIGH COURT OF KERALA.**