

(2007) 01 MAD CK 0131

In the Madras High Court

Case No : Criminal Original Petition No. 24165 of 2004 and Criminal M.P. No's. 7840 of 2004 and 4473 of 2006

Hemalatha Ramesh

APPELLANT

Vs

State by Inspector of Police (Crime) and Lalitha

RESPONDENT

Date of Decision : 10-01-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 161
Penal Code, 1860 (IPC) — Section 406, 420

Citation : (2007) 1 LW(Cri) 387

Hon'ble Judges : K.N. Basha, J

Bench : Single Bench

Advocate : M. Vijayakumar, for the Appellant; M. Kumaresan, APP for R1 and N. Manoharan, for R2, for the Respondent

Final Decision : Allowed

Judgement

K.N. Basha, J.—Mr. M. Vijayakumar, learned Counsel for the petitioner submits that the petitioner has come forward with this petition seeking for the relief of quashing the proceedings initiated against the petitioner for the alleged offence under Sections 406 and 420 I.P.C.

2. Learned Counsel for the petitioner submits that originally a private complaint was preferred by the defacto complainant against the petitioner and the same was pending u/s 156(3) of Cr.P.C., by the learned Judicial Magistrate No. IV, Coimbatore for a direction to the respondent police to register a case and investigate the same and file a final report. It is submitted by the learned Counsel for the petitioner that final report was filed by the respondent police on 3.11.2003 for the offence under Sections 406 and 420 I.P.C. and the learned Counsel also submits that the allegation against the petitioner is that the petitioner and her husband one Ramesh were running a company in the name and style of " Ansa Consmachems P. Ltd " and the petitioner is a Director. It is also submitted by the learned Counsel for the petitioner that the further

allegation against the petitioner is that the defacto complainant was appointed as Stockist for Tamil Nadu and an agreement was entered into between them on 7.8.1999 and a sum of Rs. 5 lakhs was paid by the defacto complainant as security deposit and it was also represented that the said defacto complainant would get 5% commission for the goods sold and a sum of Rs. 15,000/- could be earned per month. It is further submitted that the said Ramesh issued a receipt for the sum of Rs. 5 lakhs and he asked another Rs. 5 lakhs for making the defacto complainant as a Super Stockist and giving entire business through the defacto complainant. The defacto complainant was not able to pay another amount of Rs. 5 lakhs and further from 7.8.1999 to January, 2000 i.e. for a period of six months the turnover was only to the tune of Rs. 3 lakhs and there was no income. It is also mentioned in the complaint that the defacto complainant has sent a notice dated 31.1.2000 to the complainant to cancel the agreement dated 7.8.1999 and to withdraw herself from the capacity of stockist and also to give back the security amount to her. A reply notice dated 22.2.2000 was sent by the accused company. In the notice, it was stated that the security amount would be paid back to her with with one percent interest but no money was paid and hence the defacto complainant sent another notice dated 23.2.2000 through her lawyer for which the defacto complainant received a reply dated 19.4.2002 from the petitioner-accused. Meanwhile, the husband of the petitioner fell ill and the defacto complainant resorted to give a complaint against the petitioner and subsequently, the husband of the petitioner died, pending investigation. It is brought to the notice of this Court by the learned Counsel that the respondent police after completion of the investigation filed the final report.

3. Learned Counsel for the petitioner submits that the entire allegations contained in the complaint and other materials available on record constitutes only a civil dispute and there is no offence of cheating or criminal breach of trust made out. It is also submitted by the learned Counsel for the petitioner that the averments and the allegations contained in the complaint and the materials available on record may amount only to a breach of contract and cannot give rise to criminal prosecution for cheating as there is absolutely no material that the accused had dishonest intention at the inception of the transaction. Therefore, it is contended by the learned Counsel for the petitioner that no offence is made out either against the petitioner or against her husband. Even the entire materials available on record clearly shows that there was transaction only between the husband of the petitioner and the defacto complainant and the petitioner herein is no way in the picture. Therefore, it is contended by the learned Counsel for the petitioner that the proceedings initiated against the petitioner for the alleged offence under Sections 406 and 420 I.P.C is liable to be quashed.

4. Learned Counsel for the petitioner also placed reliance on the decision of the Honourable Supreme Court in Hridaya Ranjan Pd. Verma and Others Vs. State of Bihar and Another, to the proposition that mere breach of contract would not amount to an offence of cheating and further the allegations contained in the

complaint should make out the ingredient to the effect that the dishonest intention was even at the beginning of negotiations.

5. Learned Counsel for the petitioner further placed reliance on an yet another decision of the Honourable Supreme Court in *Ajay Mitra Vs. State of M.P. and Others*, to the proposition that the allegation made in the complaint do not prima facie disclose commission of the offence of cheating, the proceedings are liable to be quashed and further it is pointed out by the learned Counsel for the petitioner that in that case, the Honourable Supreme Court has observed that the accused in the case were not in picture at time when complainant alleged to have spent money in improving bottling plant pursuant to agreement. Learned Counsel for the petitioner submits that in the instant case also, admittedly there was an agreement only between the husband of the petitioner and the defacto complainant and the petitioner is nowhere in picture and therefore, the proceedings initiated against the petitioner is liable to be quashed.

6. Mr.N. Manoharan learned Counsel appearing for the defacto complainant contended that there are allegations levelled against the petitioner even in the complaint. It is also submitted by the learned Counsel for the petitioner that mens rea of committing offence of cheating cannot be considered at the initial stage before the commencement of trial.

7. Learned Counsel for the second respondent-defacto complainant has placed reliance on the decision of this Court in *Meena R. Sampath v. The State* reported in 2005 (5) CTC 533 to the above said proposition of law.

8. Learned Counsel for the second respondent-defacto complainant has also placed reliance on the decision of the Honourable Supreme Court in *Devender Kumar Singla Vs. Baldev Krishan Singla*, , to the proposition that the essential ingredients for cheating namely, making of a false representation, held, is one of the ingredients and such allegation need not be made in express words and the same may be inferred from all the circumstances including the conduct of the accused in obtaining the property.

9. Heard the learned Additional Public Prosecutor on the submissions made by the learned Counsel for the petitioner.

10. I have carefully considered the rival contentions put forward by either side and also perused the quash petition and the entire materials available on record including the statement of witnesses recorded u/s 161 of Cr.P.C.

11. At the outset, it is to be stated that there are only vague and general allegations levelled against the petitioner including her husband but the undisputed fact remains that even in the complaint there is a specific allegation to the effect that there was an agreement entered into between the petitioner's husband and the defacto complainant and such agreement only gives rise to cause of action and it is nowhere stated even in the complaint about the presence of the petitioner herein during the time when the transaction took place

between the petitioner's husband and the company. It is also pertinent to note that apart from such vague and general allegations in the complaint there is absolutely no corresponding materials available on record through the statements recorded u/s 161 of Cr.P.C. from the witnesses implicating the petitioner herein.

12. Learned Counsel for the petitioner placed reliance on the two decisions namely;

1. Hridaya Ranjan Pd. Verma and Others Vs. State of Bihar and Another, to that effect that mere breach of contract do not constitute the offence of cheating; and

2. Ajay Mitra Vs. State of M.P. and Others, for the proposition that when the accused is shown to be nowhere in picture during the course of transaction by the defacto complainant when the particular transaction took place, the accused cannot be mulcted with the criminal liability of the offence of cheating. As already pointed out, even the allegations contained in the complaint do not disclose any offence of cheating or criminal breach of trust against the petitioner herein. As it is subsequently mentioned even in the complaint that there was an agreement only between the petitioner's husband and the breach of such agreement only gives rise to the criminal liabilities lodged by the defacto complainant, the decision of the Apex Court as cited supra is squarely applicable to the facts of this case and in this case also, the petitioner is nowhere in picture during the course of transaction took place between the petitioner's husband and the defacto complainant.

13. Learned Counsel for the respondents though contended that there are specific allegations levelled against the petitioner, the perusal of the complaint as already pointed out shows that there are only vague and general allegations against the petitioner. The undisputed fact remains that there is specific allegation levelled only against the husband of the petitioner as there was an agreement only between the husband of the petitioner the defacto complainant. Therefore, the contention of the counsel for the second respondent-defacto complainant cannot be accepted.

14. Learned Counsel for the second respondent-defacto complainant has also placed reliance on two decisions namely one decision of the Honourable Supreme Court in Devender Kumar Singla Vs. Baldev Krishan Singla, . In that decision, the Honourable Supreme Court has held that mens rea dishonest intention on the part of the accused could be proved from the circumstances and there need not be any direct evidence. That case was decided by the Apex Court after full fledged trial. The another decision in Meena R. Sampath v. The State reported in 2005 (5) CTC 533 relied by the learned Counsel for the second respondent-defacto complainant is relating to mens rea for the offence of cheating cannot be considered at the initial stage. Those two decisions are not applicable to the facts of the instant case, in view of the findings of this Court as stated above.

15. Therefore, as already stated that there is absolutely no specific allegations

levelled against the petitioner for constituting the offence of cheating, criminal breach of trust and there is also absolutely no materials available on record through statements recorded u/s 161 of Cr.P.C. from the witnesses and as such allowing the proceedings to continue against the petitioner would amount to a clear case of abuse of process of Court and as such the proceedings is liable to quashed against the petitioner. Accordingly, the criminal original petition is allowed. Consequently, connected criminal miscellaneous petitions are closed.