(2007) 04 MAD CK 0246

In the Madras High Court

Case No : Criminal O.P. No. 12130 of 2005

Monalisa Multiplast Ltd. and Others APPELLANT

Vs

TVS Finance and Services Limited RESPONDENT

Date of Decision : 17-04-2007

Acts Referred:
Penal Code, 1860 (IPC) — Section 120B, 406, 409, 420

Citation : (2007) 04 MAD CK 0246

Hon'ble Judges : R. Regupathi, J

Bench : Single Bench

Advocate : N. Anand, for N. Anand Venkatesh, for the Appellant; Ashok Kumar, for Anand, for the Respondent

Judgement

R. Regupathi, J.—The petitioners are accused in a private complaint for an offence punishable under Sections 406, 409 and 420 IPC.

2. The petitioners 1 to 7 have entered into a contract with the complainant for Bill Discounting and Lease Finance Facilities with the complainant, for which the property of the 8th petitioner has been given as security. The first accused is the company. The second accused is the Chairman, the third accused is the Managing Director, the 4th and 5th accused are Executive Directors and the 6th and 7th accused are Directors of the first accused company. It is alleged that the first accused company failed to pay the lease charges, in full, to the complainant on the due dates. Additional finance charges levied by the complainant on the first accused, on account of the delay in payment of the lease charges by the accused, was also not paid by the first accused, in spite of several promises, in this regard. The accused have been evading payments and with dishonest intention of cheating the complainant, have caused wrongful loss to the complainant, thereby the accused are liable to be proceeded for fraud, deception, cheating, misappropriation and criminal breach of trust, for not having cleared the dues and for not transferring the immovable property, given as security.

3. Learned counsel appearing for the petitioners submits that Document No. 6

has been annexed as statement of accounts along with the private complaint. The total outstanding is for Rs. 32 lakhs, of which, 14 lakhs have been paid. To substantiate an offence of cheating and criminal breach of trust, the accused must entertain dishonest intention at the inception. In the instant case, it is a money transaction, agreement has been entered into and thereafter, substantial payments have been made. Due to certain difficulty, further payments would not have been made. Under such circumstances, the offence alleged in the complaint is not made out.

4. To substantiate the contentions raised, the learned Counsel appearing for the petitioners relied on a case reported in (2005) 10 SCC 228 Anil Mahajan v. Bhor Industries Ltd and Anr. and particularly relied on the passage, which reads as follows:

From mere failure of a person to keep up promise subsequently, a culpable intention right at the beginning, that is, when he made the promises cannot be presumed. A distinction has to be kept in mind between mere breach of contract and the offence of cheating. It depends upon the intention of the accused at the time of inducement. The subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent, dishonest intention is shown at the beginning of the transaction....

In the present case except for mention of the words "deceive" and "cheat" in the complaint filed before the Magistrate and "cheating" in the complaint filed before the police, there is no averment about the deceit, cheating or fraudulent intention of the accused at the time of entering into MOU wherefrom it can be inferred that the accused had the intention to deceive the complainant to pay.

5. Reliance was also placed on the decision reported in (2005) 10 SCC 336 to strengthen the contention made by the petitioners, wherein it has been held as follows:

...It is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating....

6. In a judgment reported 2004 (2) L.W 821 Mr. Y.S. Shah and two Ors. v. Sri. G. Srinivasan, the findings rendered in Rukmini Amma Saradamma Vs. Kallyani Sulochana and others, has been reiterated, which is as follows:

At that stage the Court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complainant as vendetta to harass the persons needlessly, vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengeance. Considered from any angle we find that the respondent had abused the process and laid complaint against the appellants without any prima facie case to harass them from vendetta.

7. Learned counsel appearing for the petitioners therefore contends that even accepting the allegations and averments contained in the private complaint as true the offence alleged is not substantiated and sought to quash the proceedings.

8. Per contra the learned senior Advocate submits that admittedly a contract has been entered into between the petitioners/accused and the complainant. Though initially payments have been made, the total outstanding is Rs. 32 lakhs. In the event of the non payment of the money as agreed earlier, dishonest intention could be inferred that the accused entertained dishonest intention at the inception. Therefore, the offence u/s 420 IPC is made out. The offence u/s 406 IPC will get attracted in view of the breach of contract. There are specific terms in the agreement entered into already, and whenever there is a default, as per the language of the Section 406 IPC, the offence will be made out and since all the accused have conspired and colluded to commit an offence, the offence u/s 120B IPC also has been invoked. Therefore, the other offence under Sections 406 and 409 IPC will be attracted. The petitioners/accused may have to agitate all these aspects, especially the availability or otherwise of the dishonest intention, only before the trial Court and it is not a fit case for quashing the proceedings by this Hon''ble Court.

9. I have perused the materials available on record and heard the submissions made.

10. After the commencement of transaction, the petitioners have made payments of the Rs. 14 lakhs and they could not continue the payment. The allegations made in para-7 of the complaint is that there is a default in payment of lease charges and there is a delay in the payment of additional finance charges. On a perusal of the complaint, the particulars regarding the commencement of the payment, the quantum of money in default, when exactly the defaults started and such other contemporaneous materials are not made available to substantiate prima facie case against the petitioners. If such details are given, it may come to light that the dispute will lead only to civil litigation.

11. Moreover, the Supreme Court repeatedly held that dishonest intention must be shown at the inception. In the instant case, in view of the reason that the petitioners have made substantial payments, I do not find that such dishonest intention existed from the inception. Subsequent conduct of default will not constitute dishonest intention. In a case reported in Indian Oil Corporation Vs. NEPC India Ltd. and Others, it has been held as follows:

A growing tendency in business circles to convert purely civil disputes into criminal cases is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors... There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.

R. Regupathi, J.

12. The 8th petitioner has deposited his title deeds as security. A person having deposited his title deeds cannot be called upon to pay instalments and he has been clubbed together along with the other accused, especially, when his title deeds are in the hands of the complainant. Prima facie it appears that the dispute is purely of civil in nature and I do not find any merit in allowing the private complaint to proceed with and it will be an abuse of process of Court.

13. Therefore, I find this is a fit case for quashing the proceedings pending in C.C. No. 7640 of 2004 before the learned XI Metropolitan Magistrate, Chennai. Accordingly, the proceedings are quashed. Consequently, connected Crl. M. Ps are closed.