

Athul Dhale vs The State Represented By on 16 April, 2019

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Bench: G.K.Ilanthiraiyan

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.26582 of 2014
and MP.Nos.1 of 2014 & 1 of 2015

Athul Dhale

... Petitioner

Vs.

1. The State represented by
The Inspector of Police,
District Crime Branch,
Vellore District
(Crime No.71 of 2013)

2. A.G.Thayumanavan
Manager-Engineering
TEL Post, Katpadi
Vellore District

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. prays for the records and quash the investigation pending on the file of respondent police in connection with Crime No.71 of 2013 dated 23.11.2013 for the offence under Section 420 r/w 34 of IPC.

For Petitioner : Mr.A.Ramesh, Senior Counsel
For Mr.C.Arun Kumar

For Respondents
For R1 : Mr.Mohammed Riyaz
Additional Public Prosecutor.

For R2 : Mr.K.V.Subramanian, Senior Counsel
for K.V.Subramanian Associates

<http://www.judis.nic.in>

ORDER

This petition has been filed to quash the FIR in Crime No.71 of 2013 registered for the offence under Section 420 r/w 34 of IPC, on the file of the first respondent.

2. The learned Senior Counsel appearing for the petitioner submitted that the Tamil Nadu Industrial Explosive Limited (herein after called as 'TEL') is the Tamil Nadu Government undertaking involved in manufacturing of commercial explosive and its accessories. During 2005, the Government of India banded the production as well as the sale of Nitro Glycerin (herein after called as 'NG') products. Thereafter, in order to prevent the deterioration of the equipments, the officials published advertisement inviting tender for utilizing the existing machinery using term-key basis. The petitioner's company M/s.3A Chemie Private Limited(herein after called as 'company') submitted two proposals. On the basis of the proposals, they entered into a Technology Agreement and Confidential and Non Disclosure Agreement. The technology agreement contained the payment recitals and terms of payment.

2.1. The total cost of the project was agreed for a sum of Rs.94 lakhs and the payment will be made in regular intervals. 20% payable against confirmed work order after executing the Confidentiality and non disclosure and technology transfer agreement and 40% against the submission of basic <http://www.judis.nic.in> engineering and detail engineering documents and document for executing TEL scope of work. 30% against the dispatch of all the equipment and instrumentations to site. Remaining 10% against the commissioning of plant and approval of manufactured products by the third party certificate. The above terms were accepted for commissioning and erecting equipments activity for 4000 tpa of 2-Ethyl Hexyl Nitrate (herein after called as 2-EHN), in which 82.58% amounting to Rs.96.20 lakhs have been received by the petitioner's company at various interval and equipment worth Rs. 5 lakhs only dispatched and as such the company did not honour its commitment which caused loss to the TEL. On repeated request of the TEL, the petitioner's Company did not yield. Therefore, the respondent lodged complaint before the jurisdictional Magistrate Court and the same has been forwarded under Section 156(3) of Cr.P.C. for investigation. On receipt of the same, the first respondent registered a case as against the petitioner and two others in Crime No.71 of 2013 for the offence under Section 420 r/w 34 of IPC.

2.2. The learned Senior Counsel further submitted that the petitioner is the Executive Director of the Company. On the tender floated by the TEL, the petitioner's Company submitted two proposal to the TEL. In response, two agreements were signed consisting Mono Methyl Ammonium Nitrate (herein after called as MMAN) and 2-Ethyl Hexyl Nitrate (2-EHN) project. With regard to MMAN project, the TEL released a sum of Rs. 14,80,000/- as 20% advance on <http://www.judis.nic.in> 16.12.2005. As per the technology agreement, the TEL requires to complete civil structure for acids and monomethyl amine gas storage tanks, mezzanine structure as provided by the petitioner's company, storage of MMAN solution and all utility line outside MMAN plant. By the communication dated 17.01.2006, the TEL informed that it would not be possible to execute the above work. At request of the TEL, the petitioner's company agreed for completion of above work for total consideration of Rs.14,35,000/-. As per the terms of the contract, the TEL has to release 40%

of the cost immediately after the submission of technology and engineering documents. Therefore there is a delay on the part of the TEL to complete this work and there is also delay in obtaining structure approval.

2.3. He further submitted that on 15.02.2006, list of equipments were ready to dispatch. The TEL informed that the work necessary for installation of equipment was nearing completion. After scrutinizing the list, the TEL released a sum of Rs.22,22,000/- to the tune of 30% of the project costs. The petitioner's company installed the equipments concerning MMAN project and trial production commenced. In fact on 11.06.2006, the Tamil Nadu Minerals Mines was conducted joint inspection with the TEL and the petitioner's company completed the contractual obligation as per the agreement dated 14.12.2005, and the company was entitled for the balance amount of Rs.9,40,000/-. On 29.07.2006, inaugural function was held in TELMIX plant and launched MMAN based explosives. <http://www.judis.nic.in> Thereafter, MMAN based explosives in the said plant and the production has crossed 4000MT level long back. Therefore, the petitioner's company completed the contractual obligation of MMAN project and they also entitled for release of 10% of project cost for Rs.19,40,000/- from the TEL on production as per the terms of the contract.

2.4. The learned Senior Counsel further submitted that insofar as the 2EHN project is concerned, as per the terms of agreement, the TEL required to release a sum of Rs.18,18,000/- which is the 20% of the total project cost and it was required to complete its scope of work mentioned in the agreement. The said payment was made on 03.01.2006. When the technology related document concerned to 2-EHN project were ready, the TEL received purchase order for 2ENH and it mentions 4000TPA capacity of 2-EHN plant. In the month of January 2006, it was informed by the TEL, that they were contemplating capacity enhancement in 2-EHN project viz., from 4000TPA to 15000TPA. As such the petitioner's company hold back the submission of technology and engineering document referred to in agreement dated 14.12.2005. On 22.02.2006, the petitioner's company submitted proposal for enhancement of existing nitration reaction facility to manufacture 15000 TPA of 2EHN, proposal for de-nitration plant and proposal for modification of existing acid handling. But the TEL did not invite for negotiations, since the enhancement of its capacity not yet decided. Therefore, considering the uncertainty of enhancement in the <http://www.judis.nic.in> capacity of 2-EHN project, the petitioner's company submitted technology and engineering document on the said project on 13.03.2006 and required for releasing another 40% of the project costs. Thereafter a sum of Rs.34,24,718/- was paid by the TEL and on receipt of the same, the petitioner's company about to dispatch the plant concerning to 4000 TPA capacity or enhanced capacity. Again the second respondent informed to hold back the dispatch of equipments and thereafter invited for negotiation about the enhancement of 2-EHN plant capacity.

2.5. On 10.05.2006 a meeting was held and finalized the proposal for the total cost of Rs.70 lakhs. This total cost for enhancement of 2-EHN project from 4000 TPA to 15000 TPA making total project cost of 2-EHN 15000 TPA capacity to Rs. 1,64,00,0000/- The minutes was also recorded on 10.05.2006. Thereafter the TEL was required to issue purchase order and release additional amount of Rs.14,00,0000/-. Again on 27.06.2006, the Managing Director of the petitioner's company requested to release the payment as per the minutes dated 10.05.2006. Again on 07.07.2006, another request made to complete the work for enhanced capacity of 4000 TPA to 15000 TPA. On

08.08.2006, the payment was made but the TEL did not complete the civil and structural scope and did not make any purchase order in the enhanced capacity proposal. The TEL completed the part of the civil work on 10.03.2008 for nitration section, but the petitioner's company in order to keep its promise, on 02.03.2008 had dispatched <http://www.judis.nic.in> the part of the goods to TEL even without receipt of the payments. Therefore it is clear that the petitioner's company cleared and fulfilled the contractual commitments as per the agreements dated 14.12.2005.

2.6. He further submitted that on 13.03.2013, the petitioner's company received noticed from the TEL claiming damages from the petitioner's company and it was also properly replied by the reply notice dated 10.05.2013. Therefore, no question of non completion of 2-EHN project by the petitioner's company. The loss occurred only due to inability and non performance of the obligations on the part of the TEL. In fact, the petitioner's company and its representatives are the victims and they suffered heavy loss. Therefore, the offence under Section 420 of IPC is not at all attracted as against the petitioner.

2.7. He further submitted that the TEL suppressed the vital fact that the two agreements dated 14.12.2005, were entered between petitioner's company and TEL for two different projects. One of the agreement has been complied by the petitioner's company and in respect of another agreement with regards to the commissioning charges, payment of royalty have not been made, through notices and correspondences. But in the complaint nothing mentioned about the another agreement and the communication between the petitioner's Company and TEL. The TEL suppressed the fact that exchange of notice dated 13.03.2013 and 10.05.2013. He further submitted that the learned Judicial Magistrate <http://www.judis.nic.in> without application of mind mechanically forwarded the complaint under Section 156(3) of Cr.P.C., for investigation. The learned Magistrate without even satisfying himself by valid reasons mechanically and casual manner forwarded the complaint to the first respondent for investigation. Further the learned Magistrate did not even state any reason for his satisfaction for sending the complaint for investigation. On reading of provisions under Section 415 of Cr.P.C. in order to bring home the offence under cheating the main ingredients have to be fulfilled. Accordingly, a person should not have deceived either by making false representation or by dishonest concealment or by any other act of omission that fraudulent or dishonest inducement of the person to either deliver any property or to consent to the retention thereof by any person or intentionally induces that person who have been deceived to do or omit to do anything which he would not do or omit if he were not so deceived.

2.8. He further submitted that entire transaction is contractual obligation to be fulfilled by both the parties as envisage under the technology agreement dated 14.12.2005. Therefore, there is absolutely no dishonest intention to cheat the TEL and as such the offence Under Section 420 of IPC is not at all made out as against the petitioner and it is completely business transaction. He further submitted that as far as the petitioner is concerned, he is the Director of the company and he had been implicated as an accused on vicarious liability. Therefore, he prayed for quashment of the FIR. <http://www.judis.nic.in>

3. Per contra, the learned Senior Counsel appearing for the second respondent submitted that on 14.12.2005, technology agreement was entered with the petitioner's company with sale of 2-EHN

technology and payments. The total cost of the agreement was Rs.94 lakhs and also to pay a sum of Rs.400/- per metric ton of 2-EHN for the first 8000 MT produced by the TEL after completion of the project as royalty. On 29.12.2005, the purchase order was placed with the petitioner's company containing the material description and specifications. It was agreed upon that the work has to be completed within a period of 20 weeks and if they failed to execute, then the second respondent could cancel the civil works. It was a proposal of enhancement of existing nitrification reaction facility from 4000 TPA to 15000 TPA and the same was not permitted by the Board of Directors of TEL and it was not considered. No purchase order was placed with the petitioner's company and no agreement for enhancement was signed by the parties.

3.1. He further submitted that on 15.02.2006, the Managing Director of the petitioner's company informed that they were ready to dispatch all the equipments and demanded further payment. Considering the total payment of Rs.96.20 lakhs, the TEL requested to dispatch the equipment, pointing out that the civil and structural work submitted by the petitioner's company for about Rs. 8 lakhs was much higher than the previous cost mentioned at Rs.3.60 lakhs. The petitioner's company agreed to complete the erection of equipment within a <http://www.judis.nic.in> period of three months. Thereafter on 10.05.2008, a notice was issued to the petitioner's company stating that despite its repeated promise and undertaking to have the equipment and instrumentation dispatched, the petitioner's company failed to sent the same and also did not erect the commission of project.

3.2. Thereafter on 12.08.2008, a meeting was convened in which the petitioner's company promised to supply the equipment and initiate installation by 21.08.2008. But the petitioner's company did not keep up their promise and it is false one. The instruments, equipment and machineries were fraudulently withheld by the petitioner's company after having receipt of Rs.96.20 lakhs. The petitioner's company supplied equipment only worth of Rs. 5 lakhs and never supplied the remaining equipment and machineries to complete the project even after receipt of payment. Therefore the petitioner's company deliberately, intentionally and purposefully violated the terms of the agreement to cheat the TEL company for their wrongful gains. He further submitted that petitioner's company insisting the TEL to make payments to comply with the terms of the purchase order. The TEL acceded the request and paid a sum of Rs.96.20 lakhs. The proposal of the petitioner's company to enhance the capacity from 4,000 TPA to 15,000 TPA was not agreed and no such agreement or no purchase order was entered or issued to the petitioner's company. Therefore, the petitioner's company did not fulfill their promise as well as did not comply with the terms and conditions agreed by the parties. The petitioner's company was already gave <http://www.judis.nic.in> sufficient time to initiate erection and commissioning of the project. But the petitioner's company wantonly and intentionally did not supply equipment and machinery with an ulterior motive of illegal gain. The petitioner's company has no real intention to provide the equipment and machineries to the respondent and as such the offence under Section 420 of IPC is clearly made out as against the petitioner. He further submitted that it is a stage of FIR and it cannot be quashed in its threshold. The first respondent has to investigate further to unearth the truth. Therefore, he prayed for dismissal of the quash petition.

4. The learned Additional Public Prosecutor filed counter for the first respondent and submitted that on direction issued by the learned Judicial Magistrate, Katpadi, on the private complaint under Section 156(3) of Cr.P.C., the case has been registered in Crime No.71 of 2013 for the offences under Section 420 r/w 34 of IPC as against the petitioner and two others. There are three accused in which the petitioner is arraigned as third accused. As per the technology agreement dated 14.12.2005, the petitioner and two others entered into with the second respondent, the total cost of the project was Rs.94 lakhs and the complainant agreed to pay royalty after completion of project of 2 EHN, for the first 8000 MT, a sum of Rs.400/- per metric ton. After receipt of the payment the petitioner's company also executed indemnity bond. As per the purchase order, the petitioner's company agreed to complete the work within a period of 20 weeks. Though the petitioner's company proposed to enhancement <http://www.judis.nic.in> of existing nitration reaction facility from 4000 ton per annum to 15000 ton per annum, the defacto complainant did not agreed for the same, since the Board of Directors were not permitted. In spite of the enhancement, no purchase order was placed with the petitioner's company. The defacto complainant repeatedly requested to dispatch all the equipments and requested to erect and commence the project, the petitioner's company violated the terms of the agreement to cheat the complainant. Thereafter, the defacto complainant also issued notice on 10.05.2008, call upon the petitioner's company to supply equipments and for erection. In this regard, on 12.08.2008, a meeting was convened where the second accused participated and he promised to supply the equipment and initiate installation by 21.08.2008. He also submitted a list of equipment to be supplied to the defacto complainant. He also admitted that there was a delay on their part and again made false promise that they would start commissioning of the project during October, 2008.

4.1. Again on 02.02.2009, a meeting was convened where the second accused participate and again promised to dispatch the equipments soon and complete the erection of 2-EHN project along with balance of machineries and equipments. Therefore, the petitioner's company fraudulently withheld the equipment and machineries despite having received a sum of Rs.96.20 lakhs, thereby the petitioner's company deliberately, intentionally and purposefully violated the terms of the agreement in order to cheat the complainant. He <http://www.judis.nic.in> further submitted that the proposal of the petitioner's company to enhance the capacity from 4000 ton p.a. to 15000 ton p.a., was not considered and no agreement or no purchase order was entered into or issued to the petitioner's company. It was also informed to the petitioner's company many time and the petitioner's company also on many occasions agreed to supply the equipment and machineries for erection of commissioning the 2EHN project. Therefore the petitioner's company willfully did not fulfill their promises as well as did not comply with the terms and conditions as agreed by them in the purchase order. Further he submitted that after registration of complaint, the first respondent police enquired so many persons in the complainant's company and recorded their statement. Therefore, he sought for dismissal of the quash petition.

5. Heard Mr.A.Ramesh, learned Senior Counsel appearing for the petitioner, Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the first respondent and Mr.K.V.Subramanian, learned Senior Counsel appearing for the second respondent.

6. Admittedly, there is a technology agreement dated 14.12.2005, between the petitioner and two others with the second respondent/defacto complainant. As per the agreement total cost was fixed at Rs. 94 lakhs and also to pay a sum of Rs.400/- per metric ton of 2EHN for the first 8000 MT produced by the second respondent after completion of the project as royalty. As per the <http://www.judis.nic.in> terms of payments 20% payable against confirmed work order; 40% against submission of basic engineering and detailed engineering documents for executing the petitioner's company agreed tender work; 30% against dispatch of all equipment and instrumentations to site and balance of 10% against commissioning of plant and approval of manufactured product. In this regard, on 21.01.2003, an indemnity bond was executed wherein all the accused persons have agreed.

7. In fact, the petitioner and his company entered into another agreement for the project of MMAN, in which the second respondent/defacto complainant released 20% of advance amount. Pursuant to the agreement, the petitioner and his company signed and issued indemnity bond in favour of the second respondent. Though the second respondent belated payment, the petitioner's company installed the equipments of MMAN project in the cite and the trial production started on 11.06.2006. The petitioner and his company completed their contractual obligation as per the agreement dated 14.12.2005 and they are entitled for royalty from the second respondent/defacto complainant for the first 8000 MT of production as per the terms of the contract.

8. In respect of the second project viz., 2-EHN as mentioned above, there is delay in completion of the project for so many reasons. In this regard, on perusal of the documents produced by the petitioner, there are so many <http://www.judis.nic.in> communications and also exchange of notices in respect of the said project. It reveals that the entire issue is contractual liability, in which the petitioner and his company performed part of the contract and in respect of the remaining work, there is a dispute in respect of enhancement of capacity of the project. The technology agreement executed on 14.12.2005. Till 2008, there are so many communications between the petitioner's company and the second respondent/ defacto complainant. Finally, on 13.03.2010, the second respondent caused legal notice, thereby call upon the petitioner's company to provide list of Directors and alleged that the petitioner's company caused huge loss of Rs.96.20 lakhs paid to them and the sum of Rs.67.14 lakhs of interest apart from the correspondent loss of resource in the incomplete plants. Further stated that Rs.1,63,00,000/- towards failure to implement the project as agreed and claimed liquidated damages of Rs. 1 crore each, towards loss of resources and loss of business, failing which they would be constrained to initiate suitable legal action. On receipt of the said notice petitioner and his company issued interim reply notice dated 13.03.2010, and followed by the detailed reply notice dated 10.05.2010. The relevant portion of the reply notice extracted here under :-

"20. With reference to para 12 to 15 of the notice:-

We deny our liability to pay any amount to TEL much less Rs.1,63,00,000/- (Rupees one crore sixty three lacs only) as alleged in para 12 or at all. We are not liable to pay any liquidated damages much less Rs.100,00,000/- (Rupees one crore only) as claimed. As a matter of fact in <http://www.judis.nic.in> respect of 2-EHN project we

have already supplied complete technology and engineering documents and major portion of the equipment required for completion of 15000 TPA capacity 2-EHN project. The cost of this exceeds Rs.96,20,000/- (Rupees Ninety six lacs twenty thousand only) received by us as advance by TEL towards 2-EHN project. We reiterate that non completion of 2-EHN project was due to inaction, indecision and failure to adhere to schedule on the part of TEL. In order to camouflage about deficiencies on the part of TEL that a false claim has been set up against us. Your claim of Rs. 3,63,00,000/-(Rupees Three crores sixty three lacs only) as detailed in para 12 of the notice is not only unsustainable in law but also ridiculous. The same is specifically denied. As against that in fact we claim from TEL as sum of Rs.19,40,000/- (Rupees nineteen lacs forty thousand only) with interest at 18% per annum as detailed in para 11 of this reply. Similarly we claim from TEL a sum of Rs.32,00,000/- (Rupees thirty two lack only) as loss of royalty as mentioned in para 19 of this reply. We hereby call upon TEL to pay the aforesaid amounts within one month failing which we will be constrained to adopt appropriate remedy for getting the same for the cost and consequences of which TEL will be solely responsible. Any threatened legal action against us would be contested for the cost and consequences of which TEL will be solely responsible."

9. It is also seen from the complaint, even according to the defacto complainant, <http://www.judis.nic.in> the petitioner and his company completed part of the project and failed to complete the same. As per the technology agreement dated 14.12.2005, there is a specific clause for Arbitration. It is relevant to extract relevant the clause in the agreement as below :-

"5.6. Arbitration - In the even of any dispute or differences arising at any time between the parties hereto as to the construction meaning or effect of this agreement or any clause or thing contained herein or the rights, duties, liabilities and obligations of the parties hereto in relation to or any matter pertaining to or arising from this agreement the same shall be referred to arbitration of sole Arbitrators if parties can agree upon one or and failing which to the panel of three Arbitrators of which one Arbitrator shall be appointed by the parties of the First Part and one by the Parties of the Third Part and such two Arbitrators shall appoint a third Arbitrator to as as Presiding Arbitrator as per the provisions of Arbitration and Conciliation Act, 1996 or any other statutory modifications or amendments thereto. All such arbitration proceedings shall be held in Chennai (India) in English language and as per Indian Laws Judgment upon any award rendered may be entered by any Court of Competent Jurisdiction in Chennai (India) or application may be made to such Court for enforcement of the award. Competent Courts in Chennai (India) shall have exclusive jurisdiction to try and entertain matters arising from this agreement."

Therefore in the event of any disputes or differences arising at any time between the parties regarding their rights, duties, liabilities and obligations <http://www.judis.nic.in> arising from the agreement shall be referred to the Arbitration. After exchanging of legal notice, the second respondent/defacto complainant kept quite for two years and in the month of October, 2012, they

lodged the present complaint before the learned Judicial Magistrate and the same was forwarded under Section 156(3) of Cr.P.C., to the first respondent. On receipt of the same the first respondent registered the case in crime No.71 of 2013, as against the petitioner and two others. It shows that the complaint lodged after seven years from the date of agreement.

10. In this regard, the learned Senior Counsel appearing for the petitioner relied upon the judgement reported in (2011) 13 SCC 412 in the case of Thermax Limited and others Vs. K.M.Johny and others as follows:-

"37) It is settled law that the essential ingredients for an offence under Section 420, which we have already extracted, is that there has to be dishonest intention to deceive another person. We have already quoted the relevant allegations in the complaint and perusal of the same clearly shows that no such dishonest intention can be seen or even inferred inasmuch as the entire dispute pertains to contractual obligations between the parties.

Since the very ingredients of Section 420 are not attracted, the prosecution initiated is wholly untenable. Even if we admit that allegations in the complaint do make out a dispute, still it ought to be considered that the <http://www.judis.nic.in> same is merely a breach of contract and the same cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction. Inasmuch as there are number of documents to show that appellant-Company had acted in terms of the agreement and in a bona fide manner, it cannot be said that the act of the appellant- Company amounts to a breach of contract.

42. We have already noted that the offence alleged in the criminal complaint filed by respondent No.1 is under Sections 405 and 420 IPC whereunder no specific liability is imposed on the officers of the company, if the alleged offence is by the Company. In the absence of specific details about the same, no person other than appellant No.1-Company can be prosecuted under the alleged complaint.

49. The entire analysis of the complaints with reference to the principles enunciated above and the ingredients of Sections 405, 406, 420 read with Section 34 IPC clearly show that there was inordinate delay and laches, the complaint itself is inherently improbable contains the flavour of civil nature and taking note of the closure of earlier three complaints that too after thorough investigation by the police, we are of the view that the Magistrate committed a grave error in calling for a report under Section 156(3) of the Code from the Crime Branch, Pune. In view of those infirmities and in the light of Section 482 of the Code, the High Court ought to have <http://www.judis.nic.in> quashed those proceedings to safeguard the rights of the appellants. For these reasons, the order passed by the Judicial Magistrate First Class, Pimpri in CC No. 12 of 2002 on 20.08.2007 and the judgment of the High Court dated 11.01.2008 in Criminal Writ Petition No. 1622 of 2007 are set aside. The complaint filed by Respondent No.1 herein is quashed.

11. On perusal of documents produced by the petitioner, it is also seen that on 10.05.2006, a meeting was convened between the petitioner's company and TEL, with regard to enhance the

capacity of 2-EHN project from 4000TPA to 15000 TPA and the minutes was also passed as follows :-

i) With available existing facilities, 3A Chemie (P) Ltd., will start trial production in small quantities before the end of May, 2006

(ii) M/s.3A Chemie (P) Ltd., will complete the erection of the entire plant with a capacity of 15000 tpa within 3 months after getting confirmed purchase order with payments as per the schedule specified in the offer given by 3A Chemie.

12. Thereafter, there are so many communications between the second respondent and the petitioner's company with regard to enhance the capacity of 2-EHN project from 4000TPA to 15000 TPA. It is seen from the E-mail dated 24.03.2008, the petitioner's company dispatched the equipments through their authorized transporters, as such the petitioner's company fulfilled their part of <http://www.judis.nic.in> the contractual obligations. Even then, the second respondent caused show cause notice to the petitioner's company on 13.03.2010 and same was properly replied by the petitioner's company by the reply notices dated 09.04.2010 & 10.05.2010. Therefore, the offence under Section 420 of IPC would not attract as against the petitioner. There is no ingredients to attract the offence as against the petitioner.

13. That apart, even assuming that the petitioner's company did not execute the work as agreed by them, that too after receipt of 82% of the contract amount, there is a specific clause in the agreement as stated supra, the dispute shall be settled by the Arbitration in accordance with the provisions of the Indian Arbitration Act 1996. It is seen that there are some dispute in respect of enhance the capacity of 2-EHN project from 4000TPA to 15000 TPA.

14. Further, in respect of another work allotted to the petitioner's company, with regard to MMAN project, the petitioner's company installed the equipments and the trial production commenced on 07.06.2006. The said project was successfully completed by the petitioner's company and the inaugural function was held on 29.07.2006. Therefore this Court finds no reason to lodge the present impugned complaint as against the petitioner, since the same petitioner entered into MMAN project, with the same second respondent. Therefore, the present impugned FIR is nothing but clear abuse of process of law <http://www.judis.nic.in> and it cannot be sustained as against the petitioner.

15. It is relevant to relay the judgment reported in (2018) 13 SCC 374 in the case of Medmeme, LLC and others Vs. Ihorse BPO Solutions Pvt. Ltd., as follows :-

9. Coming to the case at hand, a perusal of the judgment of the High Court would show that the High Court formulated the following three questions for determination:

(i) Whether the complaint is liable to be quashed on the ground that the allegations made in the complaint do not constitute any offence Under Section 420 Indian Penal

Code?

(ii) Whether the criminal law can be set in motion in this case, since the agreement comprises a provision for arbitration?

(iii) Whether the Magistrate has conducted the enquiry Under Section 202 Code of Criminal Procedure, since the Petitioners are residing outside the jurisdiction of the Court?

10. The High Court was of the view that the allegations contained in the complaint filed by the Respondent, particularly in paragraph 7 thereto, satisfy the ingredients of the offences for which the Appellants are implicated. But the High Court further observed that merely because arbitration proceedings were pending between the parties, it would not preclude the Respondent from launching criminal prosecution when prima facie criminal case <http://www.judis.nic.in> was also made out against the Appellants. In the three question formulated, the High Court took the view that the Magistrate had conducted a proper inquiry Under Section 202 of the Code of Criminal Procedure before proceeding against the Appellants.

11. The moot question before us revolves around Question No. 1 which was formulated by the High Court and it is to be seen as to whether dispute between the parties is essentially of a civil nature or any case is made out against the Appellants for launching criminal prosecution under the aforesaid Sections.

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14. On the basis of it, we find that it cannot be said that at the time of entering into the agreement, either the first agreement or even the second agreement, there was any intention on the part of the Appellants to cheat the Respondent. No suspicion of any nature was shown or even alleged.

It is also not the allegation of the Respondent in the complaint that the agreement was entered into with fraudulent or dishonest intention on the part of the Appellants in inducing the Respondent to enter into such a contract. At best, the dispute between the parties is of a civil nature, proceedings in respect of which are pending before the learned Arbitrator."

<http://www.judis.nic.in>

16. The learned Additional Additional Public Prosecutor appearing for the first respondent cited the judgment reported in (1999)8 SCC 686 in the case of Trisuns Chemical Industry vs. Rajesh Agarwal and Ors., which reads as follows :-

6. On the first count learned single judge pointed out that there was a specific clause in the Memorandum of Understanding arrived between the parties that disputes, if any, arising between them in respect of any transaction can be resolved through arbitration. High Court made the following observations:

Besides supplies of processed soyabean were received by the complainant company without any objection and the same have been exported by the complainant-company. The question whether the complainant-Company did suffer the loss as alleged by it are the matters to be adjudicated by the Civil Court and cannot be the subject matter of criminal prosecution.

7. Time and again this Court has been pointing out that quashment of FIR or a complaint in exercise of inherent powers of the High Court should be limited to very extreme exceptions vide *State of Haryana v. Bhajan Lal* (AIR1992SC81) and *Rajesh Bajaj v. State NCT of Delhi* (1999CriLJ1833).

8. In the last referred Case this Court also pointed out that merely because an act has a civil profile is not sufficient to denude it of its criminal http://www.judis.nic.in outfit. We quote the following observations:

It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions." Though the Hon'ble Supreme Court of India held in so many catena of judgments about the quashment of FIR that the High Court should be limited to very extreme exceptions, in the case of hand, it is clear abuse of process of law and the issues are related to civil in nature. As such the judgment cited by the learned Additional Public Prosecutor is not helpful to the case of the second respondent.

17. The Hon'ble Supreme Court held that while entering into the agreement, there must be intention to cheat the other party. In the case on hand, while entering the agreement by the petitioner's company, there is absolutely no intention to cheat the second respondent, since even according to the second respondent the petitioner's company supplied the equipment worth about Rs.5 lakhs. Therefore this Court finds that there is no intention or inducement while entering into the agreement to cheat the second respondent. The prosecution never alleged that the petitioner entered to the agreement with fraudulent or dishonest intention inducing the second respondent to enter into the agreement. At the very best, the dispute between the parties are civil in http://www.judis.nic.in nature and as per the arbitration clause in the agreement, the second respondent can very well approach the Arbitrator for their dispute. At any cost, the offence as alleged by the second respondent are not made out as against the petitioner and the FIR is liable to be quashed.

18. The second respondent has alleged in the complaint that the petitioner has committed offences under Section 420 r/w 34 of IPC. It would thus be necessary to examine the ingredients of the above offences and whether the allegations made in the complaint, read on their face, attract those offences under the Penal Code. Section 420 of the Penal Code reads thus :-

420. Cheating and dishonestly inducing delivery of property — Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

The ingredients to constitute an offence under Section 420 of IPC are as follows:-

- (i) A person must commit the offence of cheating under Section 415 and
- (ii) The person cheated must be dishonestly induced to (a) deliver property to any person or (b) make, alter or <http://www.judis.nic.in> destroy valuable security or anything signed or sealed and capable of being converted into valuable security.

Cheating is an essential ingredient for an act to constitute an offence under Section 420 of IPC.

19. Admittedly, the petitioner's company entered into a technology agreement for utilizing the Nitro Glycerine manufacturing facilities on turn-key basis and also received a sum of Rs.96,20,000/- equivalent to 82% of the total contract value. The condition necessary for an act to constitute an offence under Section 415 of the Penal Code is that there would be dishonest inducement by the accused. No act on part of the petitioner has been alleged that discloses an intention to induce the delivery of any property to the petitioner by the second respondent. There is thus nothing on the face of the complaint to indicate that the petitioner dishonestly induced the second respondent to deliver any property to them. Cheating is an essential ingredient to an offence under Section 420 of the Penal Code. The ingredient necessary to constitute the offence of cheating is not made out from the fact of the complaint and consequently, no offence under Section 420 of IPC is made out.

20. It has to be seen that, whether a matter which is essentially of a civil nature has been given a cloak of a criminal offence. Where the ingredients required to constitute a criminal offence are not made out from a bare reading of the <http://www.judis.nic.in> complaint, the continuation of the criminal proceeding will constitute an abuse of the process of the Court. In the present case, the averments in the complaint, read on its face, do not disclose the ingredients necessary to constitute offences under the Penal Code. An attempt has been made by the second respondent to cloak a civil dispute with a criminal nature despite the absence of the ingredients necessary to constitute a criminal offence. The complaint filed by the second respondent against the petitioner constitutes an abuse of process of Court and it is liable to be quashed.

21. Accordingly, this Criminal Original Petition stands allowed and the FIR in Crime No.71 of 2013, on the file of the first respondent is hereby quashed. Consequently, connected miscellaneous petitions are closed.

16.04.2019 Internet:Yes/No Index :Yes/No Speaking/Non speaking order rts To

1. The Inspector of Police, District Crime Branch, Vellore District.

2. The Public Prosecutor, High Court of Madras, Chennai.

<http://www.judis.nic.in> G.K.ILANTHIRAIYAN, J.

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