



1

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 07/06/2023

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

Cr1.OP(MD)No.19606 of 2022
and
Cr1.MP(MD)Nos.14341 and 13422 of 2022

S.Ravindiran : Petitioner/Accused

Vs.

Sivaswamy : Respondent/Complainant

PRAYER:- Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records in connection with private complaint in STC No.82 of 2022, dated 16/12/2021 pending on the file of the Judicial Magistrate (Fast Track) No.1, Nagercoil and quash the same and pass further or other orders.

For Petitioner : Mr.H.Elango
For Respondent : Mr.R.Murugan

O R D E R



This criminal original petition has been filed seeking quashment of the case in STC No.82 of 2022 on the file of the Judicial Magistrate (Fast Track Court) No.1, Nagercoil.

2.The case of the prosecution in brief:-

The respondent herein filed a private complaint with the following allegations:- He is the Power of Attorney Holder of one Murugan, who is the Proprietor of SM Engineering Works, Nagercoil, which is engaged in constructing fishing boats; the Power of Attorney is working in the above said concern as a Manager. During the course of the above said business, the accused alleged to have placed orders for construction of two fishing boats at the rate of Rs.67,72,500/- totalling Rs.1,35,45,000/- including GST. That request was complied by the complainant and possession was also handed over to the accused, on 25/09/2021. The entire contractual amount was to be paid and take possession. The above said amount was settled by way of cheques. The remaining amount was Rs.6,45,000/- as on 25/09/2021. When that amount was demanded, he issued a cheque, which was post-dated as



10/10/2021 on the date of the delivery. The above said amount is meant for payment of GST. It was presented for payment, on 11/10/2021 before the Karur Vysya Bank, Nagercoil. It was dishonoured, on 12/10/2021. So, he has issued a statutory notice, which was also received by the accused, but gave reply containing false particulars and facts. Before presentation of the cheque, the accused sent a letter to the complainant, on 07/10/2021 stating false allegations. It was also suitably replied, on 09/10/2021. Again, another reply was given by the accused, on 09/10/2021 containing false allegations. Thereafter only, the above said was presented for payment.

3. Seeking quashment of the same, this petition has been filed solely on the ground that a portion of the consideration for the business transaction failed due to supply of defective boats; and the petitioner would rely upon to substantiate his plea, the letters addressed to the petitioner by the Fishery Department Officials, Chennai.

4. Heard both sides.



WEB COPY

5.Failure of consideration is an issue that has been raised by the petitioner in this petition. Whether failure of consideration can be a matter for consideration, while exercising the jurisdiction under section 482 Cr.P.C, is now more or less well settled and the accused must come forward with materials, which are of sterling quality or on the basis of the admitted documents.

6.Now, as mentioned above, the case of the petitioner is that against the promise that was made by the respondent, imperfect or defective construction of the boats was made by the respondent, which was found unworthy of sailing during fishing activity now. The letter, dated 12/10/2021 is relied by the petitioner which reads as follows:-

பொருள்; கடல் மீன்வளம் – சென்னை
மீன்பிடி துறைமுகம் – மீன்பிடி விசைப்படகு
புதியதாக பதிவு செய்து தர கோரியது –
தொடர்பாக.

பார்வை; திரு.சு.ரவீந்தரன், த/பெ.
சுந்தர்ராஜ், அவர்களின் விண்ணப்ப நாள்
12.10.2021.

பார்வையில் கானும் தங்களின்



கடித்ததில் SM Engineering Works நிறுவனத்தின் மூலம் இரும்பாலான புதிய விசைப்படகு கட்டி வந்ததாகவும் அவற்றை மீன் துறையில் பதிவு செய்து வழங்கிட கேட்டு கொள்ளப்பட்டது. இதனை தொடர்ந்து மேற்கண்ட Invoice No.21SMEC001, நாள் 25.09.2021 என்ற பட்டியலின் விவரத்திலுள்ள விசைப்படகை ஆய்வு செய்தபோது 1983 தமிழ்நாடு கடல் சார் மீன்பிடி ஒழுங்குப்படுத்தும் சட்டம் மற்றும் விதிகள் 2020-ல் தெரிவிக்கப்பட்டுள்ள அளவை விட சற்று குறைந்த அளவு நீளம் அதிகமாக உள்ளதாக நேரடி ஆய்வில் தெரியவருகிறது. மேலும் தங்கள் படகு கடலில் மீன்பிடிப்பில் போது 1983 தமிழ்நாடு கடல் சார் மீன்பிடி ஒழுங்குப்படுத்தும் சட்டம் மற்றும் விதிகள், 2020-ல் தெரிவிக்கப்பட்டுள்ள இஞ்சின் பரிதிறனை காட்டிலும் வேகமாக செல்வதாக புகார் தொலைபேசி வாயிலாக பெறப்பட்டுள்ளது.

ஆகையால் 1983 தமிழ்நாடு கடல் சார் மீன்பிடி ஒழுங்குப்படுத்தும் சட்டம் மற்றும் விதிகள், 2020-ன் கீழ் தங்களின் விசைப்படகினை பதிவு செய்வதற்கேற்றவாறு மாற்றம் செய்து ஆய்விற்கு உட்படுத்தி பதிவு செய்திட உதவிடுமாறு தங்களை அன்புடன் கேட்டுக் கொள்ளப்படுகிறது.

7. Reading of the above said letter shows that the above said boats do not confirm to the specification stipulated by the Fisheries Department. What was the



6

order placed by the petitioner and what was the specification is a matter for consideration during the course of trial. Such an exercise cannot be taken by this court. Whether there was failure of performance of the contractual obligation by the respondent cannot be a matter for consideration by this court. More-over, the above said document must also be proved properly.

8.As mentioned earlier, the details of the specification during the proposal and acceptance are not available. All these matters are for consideration by the trial court. So, I am of the considered view that this is not a fittest case the exercise the jurisdiction under section 482 Cr.P.C.

9.In the result, this criminal original petition is **dismissed**. Consequently, connected Miscellaneous Petitions are closed.

07/06/2023

Index:Yes/No
Internet:Yes/No

er

To,



WEB COPY

1. The Judicial Magistrate (FTC) No.1,
Nagercoil.

G.ILANGOVAN, J



WEB COPY



8

er

Cr1.OP(MD)No.19606 of 2022

07/06/2023