

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.07.2015

Coram

The Honourable Mr. Justice B.RAJENDRAN

Crl. R.C.Nos.941 & 971 of 2009

V.Shanmugam

Son of T.Venugopal,

Proprietor

Sri Jagathambal Waste Paper Company

Mannadi, Chennai 600 001.

... Petitioner/Defacto Complainant
in both the Crl.Rcs.

vs.

1.B.V.V.S.Krishnaprasad

Son of Sathyanarayanan

2.Sumathi

3.Sathyanarayanan

... Respondents/Accused 1 to 3
in Crl. R.C.No.941 of 2009

4.The Deputy Commissioner of Police,

Central Crime Branch,

Egmore, Chennai 600 008.

... 4th Respondent/State
in Crl. R.C.No.941 of 2009

1.Soundarajan

2.Sumathi

3.Meena

... Respondents/Accused 1 to 3
in Crl.R.C.No.971 of 2009

4.The Deputy Commissioner of Police,

Central Crime Branch,

Egmore, Chennai 600 008.

...4th Respondent/State
in Crl. R.C.No.971 of 2009

Crl.R.C.No.941 of 2009 : This Criminal Revision petition is filed under Sections 397 r/w 401 of Criminal Procedure Code to call for the records and set aside the order in Crl.M.P.No.309 of 2009 on the file of the learned III Metropolitan Magistrate, George Town, Chennai, dated 29.07.2009 in X Crime No.490 of 2007.(on the file of the

respondent Police)

Crl.R.C.No.971 of 2009 : This Criminal Revision petition is filed under Sections 397 r/w 401 of Criminal Procedure Code to call for the records and set aside the order in Crl.M.P.No.310 of 2009 on the file of the learned III Metropolitan Magistrate, George Town, Chennai, dated 29.07.2009 in Crime No.618 of 2007(on the file of the Respondent Police)

For petitioner : Mr. Samuel Raja Pandian

For respondents

1 to 3 : Mr.P.Saravana Sowmiyan

For respondent - 4 : Mr.V.Arul, GA (Crl.side)

COMMON ORDER

Both the revisions are taken up together for final disposal.

2. The revision petitioner herein is the complainant before the trial Court. The case of the petitioner is that he had business dealings with the respondent/accused and in the course of business there was a due for a sum of Rs.14,10,830/-. As the accused had not paid the amount, he lodged a complaint on 04.04.2007. Since the police has not taken any further action, the complainant preferred a petition before this Court in Crl.O.P.No.17634 of 2007. Though an order has been passed to file final report, within a period of three months, no action has been made one. Again, the complainant was constrained to file another petition before this Court in Crl.O.P.No.27963 of 2008 seeking for the very same relief. Subsequently, final report had been filed for offences under section 420 r/w 34 of IPC. Investigation reveals that the company run by the accused 1 to 3 had already moved before the Board for Industrial & Financial Reconstruction (BIFR) at New Delhi, to declare them as Sick Industry. However, it is alleged that an proposal was also made by the accused company stating that they are willing to pay Rs.50,000/-per month to settle the dues, the said proposal was not accepted by the complainant. The respondent police closed the final report stating that as the complainant insisted for one time settlement and the same was not accepted by the accused company, closed the case as civil in nature. Being aggrieved over the closure report, the complainant preferred protest petitions in Crl.O.P.Nos.309 and 310 of 2009. After taking into consideration the evidence on record, the Trial Court came to the conclusion that though the matter is pending before BIFR the petitioner as well as the respondents have reaped wrongful gain and wrongful loss by having transaction with each other and hence, dismissed the protest petitions filed by the complainant and allowed the final report.

Aggrieved over the order passed by the Courts below, the complainant has preferred these Criminal Revision Petitions.

3. Heard the learned counsel for the petitioner, learned counsel for the Respondents 1 to 3 and the learned Government Advocate (Crl.side) and perused the materials placed on record.

4. This is a fit case wherein, this Court has to record certain illegal activities committed by the parties.

5. From the perusal of the records it is seen that the company which has been run by the respondents namely, Sri Venkatesa Paper & Boards Ltd., was declared as sick industry by BIFR in its proceedings dated 09.05.2001. The said company is being placed before BIFR right from 2001 onwards. It is also seen from the records that even after declaration of the sick unit, the respondent company made transactions with the petitioner as normal business transactions. It would suffice to state here that if any company which comes under the purview of BIFR and after declaration if it is permitted to continue, all the transactions which are required to be made can only be made through the concerned Bank which has been appointed by the BIFR and not through any other banks or third parties.

6. Here is the case, wherein, the petitioner as well as the respondent were transacting each other normally as if they were the buyers and sellers. It is also seen that the respondent company had transactions with the petitioner and permitted their third party to make payments and the petitioner had also purchased raw materials. Since the proceeding were pending before BIFR, and the respondents were not ready to accept the proposal made by the petitioner, investigation reveals that it is a business transaction, had closed the same as civil in nature.

7. Though the petitioner claims that he is right in rejecting the offer made by the respondents, this court is of the view that the petitioner could have disclosed these facts before the BIFR wherein the proceedings were already kept pending. Taking into consideration the attitude of the parties, I am of the view that it would suffice, if a direction is issued to the parties to appear before BIFR. Hence, both the parties are directed to appear before BIFR and file a detailed report with regard to the transactions taken place between them after the declaration. In turn, BIFR is take stringent or appropriate action against the parties for not disclosing the fact before it.

With the above observations, these Criminal Revision Petitions are disposed of.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

Smi

To

1. The III Metropolitan Magistrate, George Town, Chennai.

2.The Deputy Commissioner of Police,
Central Crime Branch,
Egmore, Chennai-8.

3.The Chief Metropolitan Magistrate, Egmore, Chennai

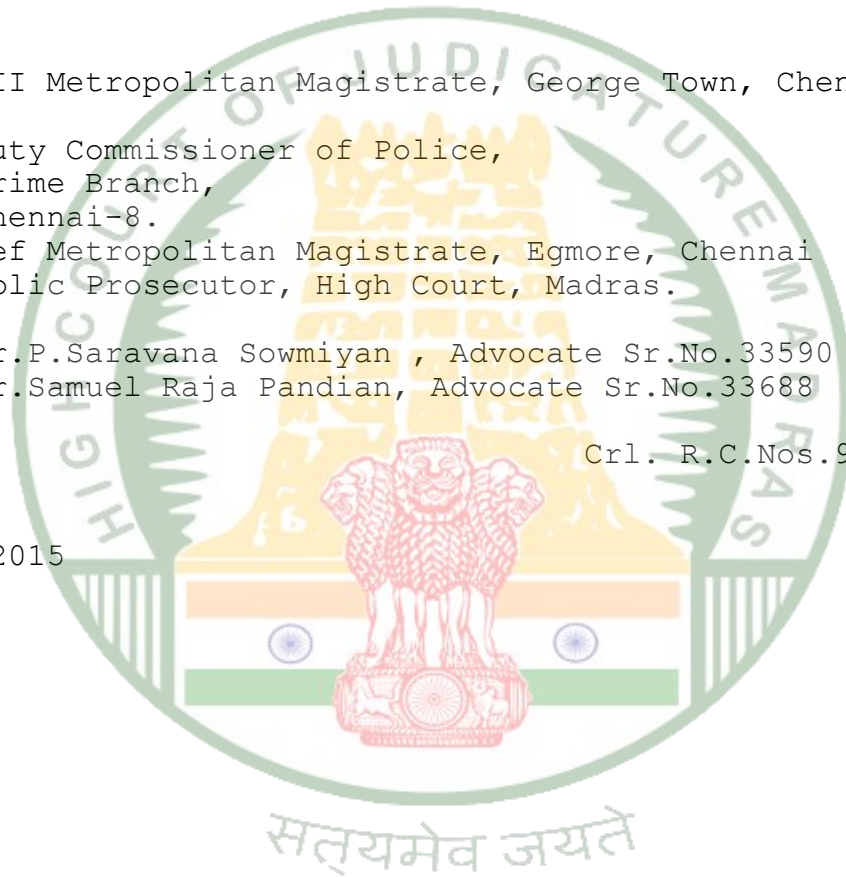
4.The Public Prosecutor, High Court, Madras.

2 cc to Mr.P.Saravana Sowmiyan , Advocate Sr.No.33590 & 33591

1 cc to Mr.Samuel Raja Pandian, Advocate Sr.No.33688

Crl. R.C.Nos.941 & 971 of 2009

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pmk.20.7.2015



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