



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.11.2015

CORAM:

THE HONOURABLE Mr.JUSTICE **S.VAIDYANATHAN**

CRL.O.P. (MD) .Nos.21036 and 21037 of 2015

and

MP (MD) Nos.1,1,2&2 of 2015

In Crl.O.P.No.21036 of 2015:

1.Arumugachamy

2.Palanichamy

3.Ramasamy

4.Shamugachamy

: Petitioners/A1, A2, A3 & A6

Vs.

1.State represented through

The Inspector of Police,

District Crime Branch,

Theni.

:1st Respondent/Complainant

2.Late Velayutha Nadar

(Died on 30.10.2011)

: 2nd Respondent/ Defacto

Complainant

PRAYER: Petition is filed under Section 482 of the Criminal Procedure Code praying to call for the records of the Charge Sheet in C.C.No.335 of 2015 on the file of Judicial Magistrate Court, Theni and quash the same with regard to the petitioners.

In Crl.O.P.No.21037 of 2015:

1.Punitham Puviyarasi

2.N.Pandian (Auditor)

: Petitioners/A4 & A5

Vs.

1.State represented through

The Inspector of Police,

District Crime Branch,

Theni.

:1st Respondent/Complainant

2.Late Velayutha Nadar

(Died on 30.10.2011)

: 2nd Respondent/ Defacto

Complainant

PRAYER: Petition is filed under Section 482 of the Criminal Procedure Code praying to call for the records of the Charge Sheet in C.C.No.335 of 2015 on the file of Judicial Magistrate Court, Theni and quash the same with regard to the petitioners.

For Petitioners

: Mr.V.Meenakshi Sundaram for Mr.D.Nallathambi

For R1

: Mrs.S.Prabha

Government Advocate (Crl. Side)



C O M M O N O R D E R

The petitioners have come forward with the petitions under Section 482 of Code of Criminal Procedure, seeking to quash the charge sheet in C.C.No.335 of 2010 on the file of the Judicial Magistrate Court, Theni, in respect of the petitioners.

2. In Crl.O.P.(MD) No. 21036 of 2015, the petitioners 1 to 3 are the partners of the firm right from the year 1985 and the fourth petitioner/A6 has entered into the partnership only on 01.04.2011. In Crl.O.P.(MD) No.21037 of 2015, the first petitioner is arrayed as the fourth accused and he retired from the firm as early as on 31.03.2011 and the second petitioner is arrayed as fifth accused and he is the Auditor of the firm. According to the defacto complainant, all the accused colluded together with an intention to defraud him by manipulating his signature in Form-V, pursuant to which, he lodged a criminal complaint against all these accused for appropriate action. Based on his complaint, a criminal case was registered in Crime No.63 of 2011 under Sections 406, 465, 468, 471, 420 and 120(B) IPC on the file of the first respondent herein. After completion of investigation, a charge sheet was filed in C.C.No.335 of 2010 on the file of the Judicial Magistrate Court, Theni.

3. The contention of the petitioners is that the defacto complainant namely, Velayutha Nadar, left the partnership firm as on 31st March 2011 and the fourth accused, namely, Punitham Puviyarasi, who is the daughter of the defacto complainant, has also left the partnership firm on the same day. The allegation against the petitioners is that the signature of the defacto complainant in Form - V has been forged. It is not the case of the defacto complainant that the signature found in the retirement deed dated 31.03.2011 has been forged or fabricated and he has not disputed the retirement from the partnership firm. It is the further case of the petitioners that apart from Form-V said to have been forged by the accused, there is a deed of retirement voluntarily signed by the defacto complainant and Form-V is only a notice to the authorities. It is further submitted that civil dispute is pending before the District Judge, Theni.

4. The learned counsel for the petitioners submitted that when there is no dispute over the retirement of the partners, the defacto complainant has no *locus standi* to make a complaint. It is further submitted that even assuming for the sake of argument that there are some issues regarding partnership firm, the complaint can be given only for violating the provisions of Section 63(1) of Indian Partnership Act 1932 and none of the provisions of Indian Penal Code can be included in this case.

5. Heard the learned counsel appearing for the petitioners and the learned Government Advocate(Crl.side) appearing for the first respondent.

6. A perusal of the complaint/offences would unearth that though there are some violation in the partnership firm, which attracts the provisions of the Indian Partnership Act, there is no bar for inclusion of the provisions of the Indian Penal Code, especially when the



criminal intention is apparent on the face of record. Once such an act is complained of, absolutely, it is either for the police or the trial court to take cognizance of offences under provisions of Indian Penal Code or other enactment and proceed further.

7. It is now represented that the matter is posted before the court on 19.11.2015 for hearing and therefore, the parties to the litigation have to put forth their case before the appropriate court. Considering all these aspects, this Court is not inclined to grant relief sought for by the petitioner.

8. However, the trial court is directed to take up the matter and decide the case as expeditiously as possible. The trial court shall conduct the case on day today basis and the case shall not be adjourned beyond 3 working days at any point of time.

9. In the result, the Criminal Original Petitions are dismissed. No costs. Consequently, connected M.P.s are closed.

Sd/-

Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar

CM

To,

1. The Judicial Magistrate, Theni.
2. The Inspector of Police, District Crime Branch, Theni.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+one cc to Mr.D.Nallathambi, Advocate in SR.No.64716

Order made in
CRL.O.P. (MD) .Nos.21036
and 21037 of 2015
and
MP (MD) Nos.1,1,2&2 of 2015
Dated:-03.11.2015

CSL/NGM-SS/30.11.2015
3p/5c