

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2016

CORAM :

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Crl.R.C.Nos.1167,1177 of 2010 and 1529 of 2011

and

M.P.Nos.1 & 1 of 2010

J.Paul RajPetitioner in Crl.RC.1167 & 1177 of 2010
/Defacto Complainant

A.RamanujamPetitioner in Crl.RC.1529 of 2011/
Accused No.2

..Vs..

1.K.S.P.Gunasekaran

2.K.S.P.Logasubramaniam

3.State rep by

Inspector of Police,

District Crime Branch,

Kancheepuram (Manimangalam Police Station),

Crime No.109 of 2005Respondents in Crl.RC.1167 of 2010/
Accused 4 & 5, Complainant

1.R.Jayaraman

2 K.V.S. Palani Durai ThevarAccused 3 & 6 & Complainant

3.State rep by the Inspector of Police,

District Crime Branch,

Kancheepuram, Kancheepuram District

...Respondents in Crl.RC.1177 of 2010/Complainant

1.State,rep by the Inspector of Police,

District Crime Branch,

Kancheepuram, Kancheepuram District

2.J.Paulraj ...Respondents in Crl.RC.1529 of 2011/
Complainant/Defecto Complainant

PRAYER in Crl.RC.1167 of 2010: Petition filed under Section 397 read with 401 of the Criminal Procedure Code, to call for the records pertaining to C.C.No.475 of 2006 pending on the file of Learned Judicial Magistrate, Tambaram and to set aside the order passed by the learned Judicial Magistrate, Tambaram dated 12.10.2010 and made in Cr.M.P.No.5388 of 2010 insofar as the

order of discharge passed in favour of the respondents 1 and 2 is concerned.

PRAYER in CrI.RC.1177 of 2010: Petition filed under Section 397 read with 401 of the Criminal Procedure Code, to call for the records pertaining to C.C.No.475 of 2006 pending on the file of Learned Judicial Magistrate, Tambaram and to set aside the order passed by the learned Judicial Magistrate, Tambaram dated 12.10.2010 and made in Cr.M.P.No.1539 of 2010 insofar as the order of discharge passed in favour of the respondents 1 and 2 is concerned.

PRAYER in CrI.RC.1529 of 2011: Petition filed under Section 397 read with 401 of the Criminal Procedure Code, to call for the entire records relating to the order dated 12.10.2010 made in CrI.MP.No.1539 of 2007 in C.C.No.475 of 2006 on the file of the learned Judicial Magistrate, Tambaram and set aside the same.

For Petitioner : Mr.S.Balasubramaniam
in CrI.RC.Nos.1167 and 1177 of 2010
Mr.Babu Muthu Meeran
in CrI.RC.No.1529 of 2011
For R1&R2 : Mr.M.Babu Muthu Meeran
in CrI.RC.Nos.1167 and 1177 of 2010
For R3 : Mrs.M.F.Shabana, G.A(CS)
M.F.Shobana G.A. For R1 in
CrI.RC.1529/2011
S. Balasubramanian
for R2 in CrI.RC.1529/2011

COMMON ORDER

As against the dismissal of the discharge petition filed by A2, CrI.R.C.No.1529 of 2011 has been filed by A2. As against the allowing of the discharge petition filed by A3 to A6, the de-facto complainant has preferred CrI.R.C.Nos.1167 and 1177 of 2010.

2. The case of the de-facto complainant is as follows:-

The petitioner in CrI.RC.No.1167 and 1177 of 2010 is the defacto complainant in this case. The defacto complainant and A2 (petitioner in CrI.RC.No.1529 of 2011) were partners in a real estate business, subsequently there was a dispute between themselves and in a mediation it was settled that A2 has to pay a sum of Rs.11,40,000/- to the defacto complainant, apart from that it is also decided in the mediation that, both the A2 and defacto complainant should partition the available property between themselves. In order to pay the amount as settled in the mediation, and also to register the partition deed, both of them went to Sub-Registrar office at Padappai. A2 handed over the

above said amount to A1 one Natarajan, who is none other than the Manager of defacto complainant, to hand over the same to the defacto complainant. But without handing over the money to the defacto complainant the A1 misappropriated the same and absconded.

3. In the above circumstances, the defacto complainant given a complaint against A1, based on the complaint, a case was registered in Crime No.109 of 2005, for offences under Sections 406 and 506 (ii) I.P.C against A1. Thereafter, the defacto complainant came to know that the other accused also involved in that crime. Hence, he filed an application under section 156 (iii) Cr.PC for further investigation, and the learned Judicial Magistrate allowed the application, based on the orders passed by the Judicial Magistrate, the other accused were also implicated in this case.

4. After investigation, the respondent police filed a charge sheet against all the accused for an offence under Section 143,420,403,406 and 120(b) I.P.C. Thereafter, all the accused filed a petition under 239 Cr.PC to discharge them from the charges. The Judicial Magistrate, Tambaram after considering the material available on record came to a conclusion that there are prima facie material available against A1 and A2 and accordingly dismissed the discharge petition filed by A1 and A2, and found no prima facie material against A2 to A6, hence, they were discharged from the charges. Challenging the order of the learned Judicial Magistrate, the defacto complainant filed Crl.RC.No.1167 of 2010 and Crl.RC.No.1177 of 2010 and dismissing the discharge petition A2 preferred Crl.RC.No.1529 of 2011.

5. Heard Mr.S.Balasubramaniam, learned counsel appearing for the petitioner in Crl.RC.Nos.1167 and 1177 of 2010; Mr.Babu Muthu Meeran, learned counsel appearing for the petitioner in Crl.RC.No.1529 of 2011; and Mrs.M.F.Shabana, learned Govt.Advocate (Crl.side) appearing for the third respondent.

6. The defacto complainant contended that there are ample materials available on record to show that the accused A3 to A6 also involved in this crime and a prima facie materials available on record against the above A3 to A6, the learned Judicial Magistrate,Tambaram without contending the same mechanically discharged A3 to A6.

7. On the other hand, the counsel appearing for the A2 contended that even as per the complaint filed by the de-facto complainant, the amount has already been given to A1 and therefore, A2 cannot be prosecuted for the offences. After receiving the money, A1 absconded and he handed over the money to none other than to the the defacto/complainant and hence, A2

cannot be prosecuted for the offences.

8. I have considered the rival submissions made by the learned counsel for the parties and perused the records carefully.

9. The complaint originally given by the de-facto complainant shows that A2 and de-facto-complainant were partners in the business. Subsequently, there was a dispute between them in dealing with the properties, and A2 has to pay a sum of Rs.11,40,000/-, and the de-facto complainant demanded the money. There was a mediation between the parties and A2 was directed to pay a sum of Rs.11,40,000/- to the defacto-complainant.

10. Even as per the original complaint given by the defacto complainant, A1 already received the money from A2, and he has misappropriated the same and absconding, based on the complaint, the Crime was also registered against A1 under Sections 406 and 506 (ii) I.P.C. Thereafter, based on the petition filed by the defacto complainant under Section 156(iii) Cr.PC the other accused were implicated in this case. After perusing the records, the learned Judicial Magistrate has come to a conclusion that a prima facie case is made out against A1 and A2.

11. Admittedly, there was a money dispute between A1&A2, and even as per the original complaint, A1 already received money and absconding. Hence, it is admitted by the defacto complainant himself that money has already paid to A1. The subsequent allegation was that the money was misappropriated by A4 and there is no materials available on record to show that the other accused received the above amount and to substantiate the allegation that A4 used the above money and purchased a property in favour of A4's wife, there is no material available on record.

12. In the above circumstances, the Court below has correctly come to a conclusion that there is no prima facie materials available against A3 to A6 to proceed with the trial. Since, there are material available on A1 and A2, the learned Judicial Magistrate, dismissed these petitions filed by them. I have carefully considered the materials available on record and I find no infirmity in the order passed by the learned Judicial Magistrate, Tambaram.

13. In the result, all revision petitions are dismissed. Since the matter is pending from the year 2010, the trial Court is directed to complete the trial and dispose of the case within a period of six months from the date of receipt of a

copy of this order. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1 The Judicial Magistrate, Tambaram.

2 -do- Thro The Chief Judicial Magistrate, Kancheepuram

3 The Inspector of Police
District Crime Branch

Kancheepuram

4 The Public Prosecutor, High Court, Madras

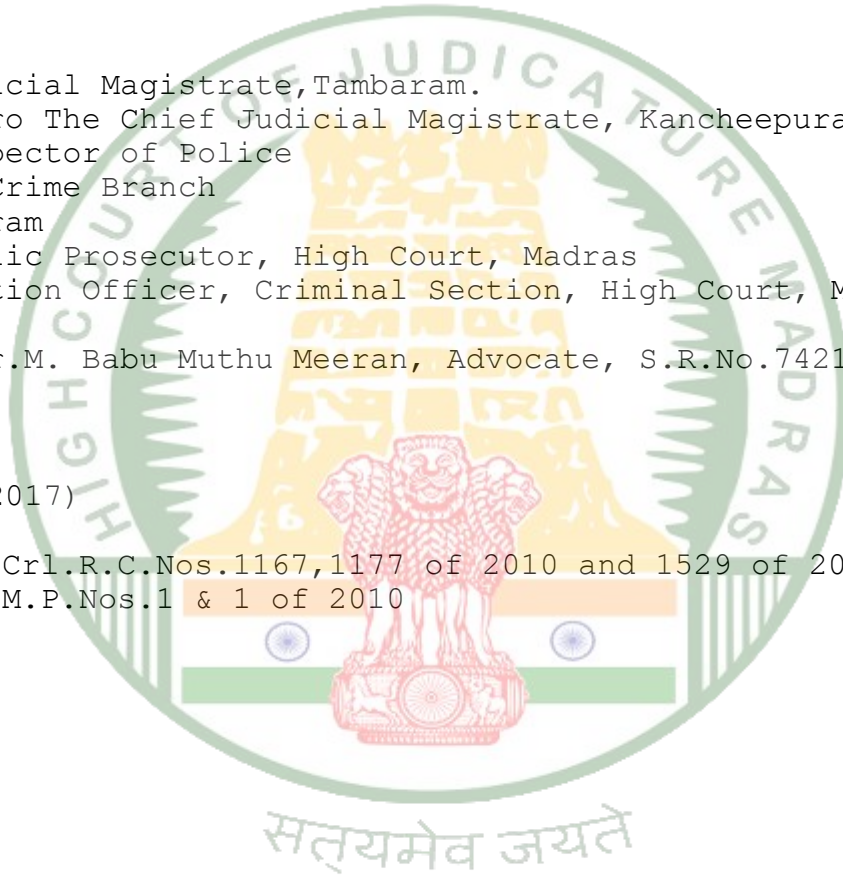
5 The Section Officer, Criminal Section, High Court, Madras

+lcc to Mr.M. Babu Muthu Meeran, Advocate, S.R.No.74210

SKV(CO)

md(31/01/2017)

Crl.R.C.Nos.1167,1177 of 2010 and 1529 of 2011 and
M.P.Nos.1 & 1 of 2010



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