

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2016

CORAM:

THE HONOURABLE MS.JUSTICE R.MALA

Crl.O.P.No.2043 of 2016

K.Sampath Kumar

... Petitioner

Vs.

State: Represented by
Inspector of Police
Ketti Police Station,
Crime No.40 of 2015
Nilgiris District.

... Respondent

Prayer :

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to call for the records and to quash the First Information Report in Crime No.40 of 2015, on the file of the Respondent.

For Petitioner : Mr.R.John Sathyan

For Respondent : Mr.C.Emalias

Additional Public Prosecutor

ORDER

The petitioner has come forward with this petition seeking to quash the First Information Report in Crime No.40 of 2015 registered on 04.03.2015 for the offence punishable under Section 406 of I.P.C.

2.The learned counsel for the petitioner submitted that the petitioner who is a Contractor has stored 72 bags of Amma cement in his godown and on that basis, Village Administrative Officer after information gone there, verified and given a complaint and on that basis a case has been registered. Now, the petitioner/accused has come forward with this petition for the above stated relief.

3.The learned counsel for the petitioner further submitted that the petitioner is only a Contractor. He purchased cement for his contract work. So the ingredients of Section 406 of I.P.C. is not made out. He would further submit that for the offence under Section 406 of I.P.C., the basic ingredient is

entrustment, but here, it is not the case of the prosecution that somebody has entrusted to him and it was misappropriated by him. But whereas, he himself purchased the cement. So the ingredients has not been made out. Hence, he prayed for quashing of the First Information Report in Crime No.40 of 2015.

4.The learned Additional Public Prosecutor would submit that the petitioner is a Contractor and this Amma cement is only for the people who is in lower and middle income group at concessional rate. But, this petitioner who is a Contractor is not entitled for using Amma cement. He would further submit that even though the case has been registered for the offence punishable under Section 406 of I.P.C., it was altered and charge sheet has been filed for the offence punishable under Section 403 of I.P.C. It is yet to be taken on file. Hence, he prayed for dismissal.

5.Considering the rival submissions made on both sides and on perusal of typed set of papers, it is known that admittedly, the petitioner is a Contractor. The complaint has been given by Village Administrative Officer. In his complaint he has stated that on 02.03.2015, he received the information that the petitioner herein has stored 72 bags of Amma cement which is denoted for only poor, lower and middle income group at concessional rate. But the petitioner who is a Contractor has possessed the same. Hence, a case has been registered for the offence punishable under Section 406 of I.P.C.

6.It is appropriate to consider the argument advanced by the learned counsel for the petitioner. In that he has stated that the main ingredient for Section 406 of I.P.C., is that there must be entrustment. Here, the basic ingredient has not been made out because he himself has purchased the Amma cement. It is not the case of the prosecution that Government has entrusted to him and he has mis-appropriated. So, the averment itself prima facie prove that the basic ingredient for Section 406 of I.P.C. has not been made out. It is also accepted by the learned Additional Public Prosecutor in paragraph no.7 of the counter that after investigation, charge sheet has been filed for the offence punishable under Section 403 of I.P.C.

7.It is appropriate to incorporate Section 403 of I.P.C. which is as under:

"403.Dishonest misappropriation of property – Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

In that it was specifically mentioned dishonestly misappropriates. But, here misappropriation does not come because even though Amma cement is denoted for lower, middle income group for their entitlement to purchase the same at concessional rate for construction or to use for building, this petitioner managed to purchase the same.

8.It is not the case that the Government has entrusted the cement to him which was mis-appropriated by him. In such circumstances, the offence punishable under Section 403 of I.P.C. also has not been made out because Section 403 of I.P.C was for dishonest misappropriation of the property. It is not the case that the Government has issued to him and that has been misappropriated by him. But, it is the case that he purchased through somebody. It is in his possession for using it for construction work or doing contract work. In such circumstances, the basic ingredients of misappropriation does not arise since he is the owner of the property. Hence, this is a fit case for quashing the F.I.R. in Crime No.40 of 2015.

9.Accordingly, this Criminal Original Petition is allowed and the First Information Report in Crime No.40 of 2015 is hereby quashed.
pri

-s/d-

Assistant Registrar(AS)

True Copy

Sub-Assistant Registrar

To

1. The Inspector of Police
Ketti Police Station,
Crime No.40 of 2015
Nilgiris District.

2. The Public Prosecutor
High Court, Madras.

+1 cc to Mr.R.John Sathyan, Advocate SR 20412

vsn(co)
prk11/4

Cr1.O.P.No.2043 of 2016