



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.07.2016

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

Crl.R.C.(MD) Nos.275 and 277 of 2016

Crl.R.C.No.275/2016:

M/s.Shadirom @ Sons
through its Manager
Deshraj Sharma
S/o.Dhanam Chand Sharm
No.19 South Raja Street
Tuticorin

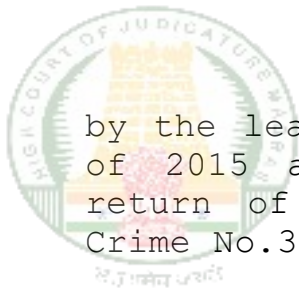
... Petitioner

-vs-

1. Shanmugam Traders Pvt Ltd.,
Rep. by its Directors,
No.1 Peraira Lane
Tuticorin-628 002.
2. L.Prabhakar
3. Annadurai
4. Chellathai
5. Jeyakar
6. Manohar
7. Sudhakar
8. Manager
IDBI Bank,
Tuticorin.
9. State through
Sub Inspector of Police,
District Crime Branch
Thoothukudi
Crime No.34/15
10. Manager
T.N.Warehousing Corporation Ltd.,
Melavittan
Tuticorin

... Respondents

Prayer: Petition filed under Section 397 r/w 401 of Code of Criminal Procedure to call for the records in Cr.M.P.No.81 of 2015 and Cr.M.P.No.592 of 2016 on the file of the learned Judicial Magistrate No.1, Tuticorin, and set aside the common order passed



by the learned Judicial Magistrate, on 24.03.2016 in Cr.M.P.No.81 of 2015 and Cr.M.P.No.592 of 2016 and consequently order the return of commodities to the petitioner, which were seized in Crime No.34 of 2015 by the 9th respondent.

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For Petitioners : Mr.A.D.Jagadish Chandra
For R1 to R7 : Mr.V.Prakash, Senior Counsel
For Mr.G.Prabhahari
For R8 & R10 : No Representation
For R9 : Mr.A.P.Balasubramani
Govt. Advocate (Crl.Side)

Crl.R.C.No.277/2016:

M/s.S.R.S. Exports Pvt Ltd.
through its Manager
Kutralam
S/o.Mariappan
No.19, South Roja Street
Tuticorin.

... Petitioner/Petitioner

-vs-

1. Shanmugam Traders Pvt Ltd.,
Rep. by its Directors,
No.1, Peraira Lane
Tuticorin-628 002.
2. L.Prabhakar
3. Annadurai
4. Chellathai
5. Jeyakar
6. Manohar
7. Sudhakar
8. Manager
IDBI Bank,
No.54, to 56 Great Cotton Road, Tuticorin.
9. The Chief Manager,
Indian Overseas Bank,
21, Victoria Road, Tuticorin
10. State through
Sub Inspector of Police,
District Crime Branch
Thoothukudi



11. Manager
T.N.Warehousing Corporation Ltd.,
Melavittan
Tuticorin.

... Respondents

Prayer: Petition filed under Section 397 r/w 401 of Code of Criminal Procedure to call for the records in Cr.M.P.No.80 of 2015 and Cr.M.P.No.593 of 2016 on the file of the learned Judicial Magistrate, Tuticorin, and set aside the common order passed by the learned Judicial Magistrate, on 24.03.2016 in Cr.M.P.No.80 of 2015 and Cr.M.P.No.593 of 2016 and consequently order the return of commodities to the petitioner, which were seized in Crime No.36 of 2015 by the 9th respondent.

For Petitioners : Mr.A.D.Jagadish Chandra

For R1 to R7 : Mr.V.Prakash, Senior Counsel
For Mr.G.Prabhahari

For R8, R9 & R11 : No Representation

For R10 : Mr.A.P.Balasubramani
Govt. Advocate (Crl.Side)

C O M M O N O R D E R

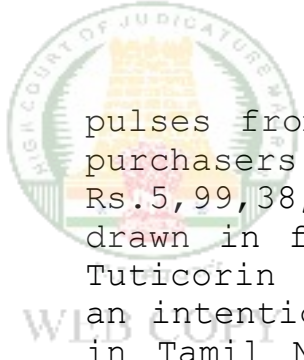
Though Crl.O.P.(MD) Nos.12628 and 12629 of 2016 are listed for hearing today, at the request of the learned counsel for the petitioners, these revision petitions, though not listed in the cause list, are taken up for hearing for the purpose giving quietus to the issues. However, on request of the petitioners, Crl.O.P.(MD) Nos.12628 and 12629 of 2016 are adjourned after four weeks for hearing and Crl.R.C.(MD) Nos.275 and 277 of 2016 are disposed of by way of this common order.

2. Crl.R.C.No.275 of 2016 has been filed challenging the dismissal of the petition filed under Section 451 Cr.P.C. in Cr.M.P.No.81 of 2015 dated 24.03.2016. Crl.R.C.No.277 of 2016 has been filed challenging the dismissal of the petition filed under Section 451 Cr.P.C. in Cr.M.P.No.80 of 2015 dated 24.03.2016.

3. Crl.R.C.No.275 of 2016 has been filed by M/s.Shadiram & Sons represented by the Power Agent Deshraj Sharma and Crl.R.C.No.277 of 2016 has been filed by M/s.S.R.S.Exports Pvt. Ltd., represented by the Power Agent Kutralam. The commodities belonging to the petitioners have been sold in favour of M/s.Shanmugam Traders Pvt. Ltd.(R1) and R2 to R7. As there is a common question of law and facts, common order is passed in both

<https://hdsrscmptvltuticorin/>

4. The petitioner in Crl.R.C.No.275 of 2016 is an importer of



pulses from various countries and the respondents 1 to 7 are the purchasers of commodities from the petitioner worth Rs.5,99,38,167/- and the respondents 1 to 7 had issued 23 cheques drawn in favour of the petitioner drawn on Indian Overseas Bank, Tuticorin Branch. It is alleged that the respondents 1 to 7 with an intention to cheat the petitioner stored the entire commodities in Tamil Nadu Warehousing Corporation in the name of the family members and not in the name of Shanmugam Traders (R1). They also filed false declaration that the commodities were agricultural products from their own agricultural land. Aggrieved over that, the petitioner gave a complaint to the Sub Inspector of Police, District Crime Branch, Tuticorin, leading to registration of the case under Sections 406, 409 and 420 IPC.

4.1. During investigation, the Investigating Officer seized the entire commodities, which were lying in Tamil Nadu Warehousing Corporation.

4.2. The petitioners filed petitions seeking return of the commodities before Judicial Magistrate No.1, Tuticorin. The IDBI Bank in Cr.M.P.592 & 593 of 2016 also claimed that the commodities were under mortgage to them and therefore, as owners in possession, they are entitled to return of commodities. The Court after hearing both sides and also after hearing Tamil Nadu Warehousing Corporation dismissed these petitions mainly on the ground that writ petition is pending before Madurai Bench, which was filed by the Tamil Nadu Warehousing Corporation as well as by the accused, stating that procedures as contemplated under Section 102 of Cr.P.C., has not been followed, while effecting seizure of property. Both the common orders are under challenge in these petitions.

5. The learned counsel appearing for the petitioners and respondents in both the cases submitted that the matter has been amicably settled between the petitioners in both cases along with the respective respondents and this compromise was to ensure that the commodities stored in Tamil Nadu Warehousing Corporation do not get perished, thus leading to loss of money.

6. The terms and conditions of compromise finds place in the compromise petition and the learned counsel appearing on both sides prayed for an order in terms of the compromise. Learned counsel for the petitioners has submitted that the petitioners undertake to pay the entire amount due to IDBI Bank, Tuticorin and the storage charges, if any, to the Tamil Nadu Warehousing Corporation Ltd. The said undertaking is recorded.

7. For the sake of reference and record, terms of the compromise are reproduced hereunder:



"MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding entered at Tuticorin on this the 5th day of July 2016 between M/s.Shadiram and Sons and M/s.SRS Exports Pvt. Ltd., Through its Manager, Deshraj Sharma, S/o.Dharamchand Sharma, having office at No.19, South Raja Street, Tuticorin hereinafter called the PARTY OF THE FIRST PART which term shall mean and include wherever the context admits their legal heirs, executors, legal representatives, administrators and assigns etc.,

AND

1. M/s.Shunmugam Traders (P) Ltd, Through its Managing Director, L.Prabakar, S/o.S.Lenin, having office at No.1, Pereria Lane, Tuticorin. 2.L.Jeykar, S/o.S.Lenin, Director of M/s.Shanmugam Traders (P) Ltd, having office at No.1, Pereria Lane, Tuticorin. 3.L.Manohar, S/o.S.Lenin, Director of M/s.Shanmugam Traders (P) Ltd, having office at No.1, Pereria Lane, Tuticorin. 4.L.Annadurai, S/o.S.Lenin, Director of M/s.Shanmugam Traders (P) Ltd, having office at No.1, Pereria Lane, Tuticorin. 5.L.Sudhakar, S.Lenin, Director of M/s.Shanmugam Traders (P) Ltd, having office at No.1, Pereria Lane, Tuticorin and 6.L.Chellathai, W/o.S.Lenin, Director of M/s.Shanmugam Traders (P) Ltd, No.1, Pereria Lane, Tuticorin hereinafter called the PARTY OF THE SECOND PART which term shall mean and include wherever the context admits their legal heirs, executors, legal representatives, administrators and assigns etc.,

2. Whereas the Party of the Second Part purchased different varieties of Pulses from the Party of the First Part under various invoices to the value of Rs.8,21,10,170/- (M/s.Shadiram and Sons Rs.5,99,38,167.00 + M/s.SRS Export Pvt Ltd Rs.1,87,69,976.000 + M/s.SRS Agri Foods Rs.34,02,027.00/- = Rs.8,21,10,170/-) (Rupees Eight Crores Twenty One Lakhs Ten Thousand One Hundred and Seventy Only).

3. Whereas the Party of the First Part has lodged two complaints against the Party of the Second Part which culminated into two criminal cases in Cr.No.34 of 2015 and Cr.No.36 of 2015 on the file of District Crime Branch, Tuticorin District for the alleged offences under Section 406, 409 & 420 of IPC.

Pursuant to the said cases three Directors namely L.Manohar, L.Annadurai & L.Sudhakar of M/s.Shanmugam Traders (P) Ltd, were arrested and they were released on bail on 27.11.2015 by the Hon'ble Madurai Bench of Madras High Court. During the pendency of the bail petition a



sum of R.1,00,00,000/- was paid to the Party of the First Part and after deducting the above said 1 Crore the net liability payable by the Party of the Second Part to the Party of the First Part is Rs.7,21,10,170/- (Rupees Seven Crores Twenty One Lakhs Ten Thousand One Hundred and Seventy Only)

4. Whereas on 05.05.2016 the Managing Director of the Party of the First Part namely L.Prabakar was arrested and thereafter his bail petition was also dismissed on 14.06.2016 in CrI.O.P.Nos.8491 and 8474 of 2016 by the Hon'ble Madurai Bench of Madras High Court, the other directors of the Company on consultation with the managing director have entered in to the compromise on his behalf and on behalf of the company.

5. Whereas the parties herein agreed and confirm that as on today the net amount payable under the various invoices after deducting a sum of Rs.1,00,00,000/- to the party of the First Part is a sum of Rs.7,21,10,170/- (Rupees Seven crores twenty one lakhs ten thousand one hundred and seventy only) and the same was confirmed by the party of the second part.

6. Whereas the parties agreed to resolve their disputes through a meeting held on 28.06.2016 at No.50, Armanian Street, Chennai-600 001, and agreed to the following terms to resolve the disputes between them;

7. The party of second part hereby confirms and agreed to release 1,038,490 metric ton of various pulses lying in the Tamil Nadu Ware Housing Corporation, Meelavittan, Tuticorin to the party of the first part subject to clearing the dues to the IDBI Bank, Tuticorin Branch and to the warehousing corporation, Meelavittan and the party of the First Part agreed to give credit to the value of the said pulses as set out in the schedule hereto.

8. Whereas the Party of the First Part confirmed and agreed that they will have no objection to the quash petition to be filed by the Parties of the Second Part before the Hon'ble Madurai Bench of Madras High Court to quash the F.I.R. in Cr.Nos.34 and 36 of 2015 on the file of the District Crime Branch Tuticorin in view of the compromise amicably arrived at between the parties. The party of the II part agrees to pass a board resolution ratifying the above compromise. Further the parties of the First part will have no objection for granting bail to the party of the second part namely Mr.L.Prabhakar.

9. The Party of the Second Part namely M/s.Shanmugam Traders Pvt. Ltd was allotted about 1.63 acres of land in



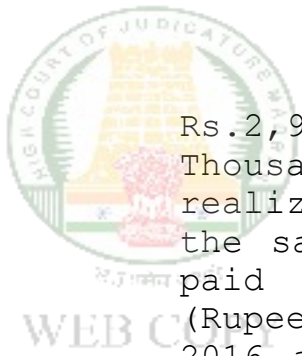
Plot No.7 and 14, Phase II belongs to SIDCO Industrial Estate at Meelavittan, Tuticorin by way of a lease executed by the SIDCO in favour of the Party of the Second Part and the Party of the Second Part agreed to transfer the said lease of the plots in favour of Party of the First Part valued as Rs.1 Crore 25 Lakhs and Party of the First Part agreed to give credit of Rs.1.25 Lakhs against the due amount on the execution of registered irrevocable Power of Attorney by the Party of the Second Part in favour of the Party of the First Part.

10. The Party of the Second Party also agreed to execute a registered sale deed in respect of land to an extent of 37 acres covered under the different Survey Nos.141, 142, 227, 228, 229, 232 in Melaeral and Keelaeral, Tuticorin District belongs to Chinnasamy and Selvakumar in favour of the Party of the First Part which is valued at Rs.2 Crores and the Party of the First Part has agreed to give credit of Rs.2 Crores against the balance amount due.

11. Whereas after giving credit of Rs.1.25 Lakhs for the SIDCO land, Rs.2 Crores for the Keelaeral and Melaeral property, Pulses will be sold to the highest offerer by the party of the first part after getting concurrence particularly in fixing the price for the pulses from the party of the second part. The amount due to the IDBI Bank and Tamilnadu Warehousing Corporation will be paid by the party of the I part and remaining balance will be given credit in the A/c of M/s.Shanmugam Traders Pvt. Ltd for the dues due to the M/s.Shadiram & Sons. The M/s.Shanmugam Traders Pvt. Ltd will issue cheques for the balance amount due to M/s.Shadiram & Sons. The party of the II part has approximately given the value of pulses after defraying amount due to IDBI Bank and rent due to Tamilnadu Warehousing Corporation at Rs.1,00,00,000/- (One Crores Only). The party of the first part hereby confirms and agrees to realize the cheques corresponding to dues remaining after the sale of the pulses which is lying in the warehousing corporation.

The party of the II part agrees to give an undertaking before the Honorable High Court for the due performance of this agreement. Both parties agree and confirm that the pulses lying in the warehousing will be weighed in a weighing machine identified by with the concurrence of the both parties.

12. The party of the II part states that after giving credit of Rs.2 Crores for the Keelaeral and Melaeral property, the pulses lying in the Tamil Nadu Ware House Corporation Meelavittan against Rs.7,21,10,170/- the balance amount payable to the Party of the First Part is



Rs.2,96,10,170/- (Rupees Two Crores ninety Six Lakhs Ten Thousand One Hundred Seventy Only) subject to the actual realization of sale price of the pulses of the soled and the said amount will be paid the balance amount will be paid in equal monthly instalments of Rs.5,00,000/- (Rupees Five Lakhs Only) starting from 15th day August 2016 as stated below, Provisionally 60 installments, and the last installment will be Rs.1,10,170/-.

13. Whereas the Party of the First Part is ready to return all the cheques issued against each invoices by the Party of the Second Part to the Party of the Second Part and the Party of the First Party hereby confirms that except the due amount as stated above, there is no other claim whatsoever against the Party of the Second Part and on the payment of the said due amount the account is fully and finally settled.

14. Whereas the Parties of The First Part hereby confirm that no cheque belonging to the parties of the second part prior to the date of this agreement is to be presented and is treated as cancelled..." "

In view of the compromise entered into between the parties, these petitions are allowed and the common orders dated 24.03.2016 passed by the learned Judicial Magistrate No.1, Tuticorin in Cr.M.P.No.81 of 2015 and Cr.M.P.No.592 of 2016 and Cr.M.P.No.80 of 2015 and Cr.M.P.No.593 of 2016 are set aside. The commodities seized in connection with Crime Nos.34 and 36 of 2015 are ordered to be returned to the respective petitioners forthwith.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar (CS)

To:

1. The Judicial Magistrate No.I, Tuticorin.
2. The Sub Inspector of Police,
District Crime Branch, Thoothukudi.
3. The Manager
Tamil Nadu Warehousing Corporation Ltd.,
Melavittan, Tuticorin.

<https://hservices.eas.gov.in/services>
4. The Chief Manager,
Indian Overseas Bank,
21, Victoria Road, Tuticorin



4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

5. The Manager,
IDBI Bank, 54 to 56 Great Cotton Road,
Tuticorin.

+1cc M/s.G.Prabahari, Advocate, Sr.No.39451

+2cc Mr.Antony S.Prabhar, Advocate, Sr.Nos.39349 & 39350

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JM/GSV-PM/SAR-I/02.08.2016/9P-9C

Crl.R.C. (MD) Nos.275 & 277 of 2016
25.07.2016