

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18.04.2017

CORAM
THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

CRL.O.P.No.15535 of 2010
and
M.P.No.1 of 2010

Valarmathi

.. Petitioner

Vs

1.Sub-Inspector of Police,
Central Crime Branch,
Team No.8,
Commissionerate of Chennai,
Chennai-600 008.
Egmore.

2.S.Lakshmi .. Respondents
(Impleaded the 2nd respondent as per the order
of this Court dated 21.10.2010 in M.P.3/2010)

PRAYER: Criminal Original Petition filed under Section 482 of
the Code of Criminal Procedure, to call for the records in
C.C.No.6863 of 2010 pending on the file of the learned XI
Metropolitan Magistrate's Court, Saidapet, Chennai and quash the
same.

For Petitioner : Mr.S.Sivam Sivanandraj

For Respondents : Mr.B.Ramesh Babu (for R1)
Government Advocate (Crl.Side)

Mr.S.Dhanasekar (for R2)

सत्यमेव जयते
ORDER

The petitioner herein is the 1st accused in C.C.No.6863 of
2010 on the file of the Learned XI Metropolitan Magistrate,
Saidapet, Chennai. The said final report in Calendar Case
No.6863 of 2010 came to be filed in correspondence with
investigation conducted by the 1st respondent in pursuant to
registration of FIR in Crime No.238 of 2009 dated 11.06.2009 as
against the petitioner and 2 others under Sections 406 and 420
of IPC on the complaint of the defacto complainant.

2.The brief facts in nutshell behind the charges laid in
C.C.No.6863 of 2010 against the petitioner as follows:

According to the 2nd respondent / defacto complainant namely S.Lakshmi, the petitioner herein along with the 2nd accused operated a consultancy in the name and style of Vigro Consultancy and the defacto complainant in order to secure a job to her daughter Umadevi has paid a sum of Rs.1,60,000/-. Though the petitioner and the 2nd accused namely Sakunthala secured defacto complainant's daughter with Extreme InfoTech Software Private Limited owned by the 3rd accused, but the defacto complainant's daughter was not paid with salary regularly.

3.For 4 months of employment only a sum of Rs.20,000/- was paid as an aggregate salary. Thus the defacto complainant's daughter as well her daughter was cheated and accordingly she lodged a complaint before the 1st respondent. The 1st respondent registered a case under Sections 406 and 420 of IPC and proceeded with investigation.

4.The 1st respondent in pursuant to investigation, filed the charge sheet under Section 420 r/w 34 of IPC as against the petitioner and Sakunthala as second accused and the proprietor of Xtreme InfoTech Software Private Limited namely Shayam Singh as the 3rd accused.

5.In support of charge laid, totally 8 witnesses were cited. The 7th and 8th witnesses are investigation officers handled the case. The 1st witness is the defacto complainant, 2nd witness is Uma Devi, the defacto complainant's daughter, 3rd and 4th witnesses namely Thiraviyam Pillai and Mahendran relatives of de facto - complainant. The Witness Nos. 5 and 6 are the owners of the building premises of the 1st accused consultancy operating at Thiruvallikeni and Alwar Thirunagar respectively.

6.I heard Mr.S.Sivam Sivanandraj, learned counsel for the petitioner, Mr.B.Ramesh Babu, learned Government Advocate (Criminal Side) for the 1st respondent and Mr.S.Dhanasekar, learned counsel for the 2nd respondent and perused the entire materials available on record.

7.At the outset it is to be noted that the offence charged being the one for cheating, necessarily ingredients of cheating namely dishonest intention and deception is to be made out by the prosecution.

8.In simple words, to attract offence of cheating there must be some act of deception by the petitioner herein. Whereas in case on hand absolutely there is no material to show that the petitioner has deceived the de-facto complainant as such no concrete material stands to show the transaction of Rs.1,60,000/-.

9.However at the same time, it is admitted case of the respondents that the petitioner has secured a job to the

defacto-complainant's daughter and it is further seen that the defacto - complainant's daughter had also joined the said job. Therefore nothing Malice can be attributed against the petitioner.

10.It is useful to say that the record reveals that de facto - complainant's daughter was irregular to the job and she has also availed long leave. More particularly it is seen that the defacto complainant's daughter vide her statement under Section 163 of Cr.P.C. has clearly stated that she demanded the 3rd accused for termination of her service.

11.Thus a conjoint appraisal of above facts would disclose that after securing a job assisted by the 1st petitioner through consultancy for which naturally she should be paid but in pursuance to subsequent problems arisen with regard to employment, the defacto complainant cannot attribute 1st petitioner with an offence of cheating.

12.If petitioner despite having received any remuneration or commission but if she had not secured a job for de facto - complainant's daughter, it would be a clear case of cheating.

13.Whereas admittedly job was secured by the defacto - complainant's daughter in 3rd accused concern through 1st accused. Merely because the said job was secured through the petitioner, he cannot be victimized for the dispute prevailed between the 3rd accused and the defacto - complainant's daughter.

14.In this regard it is equally important to consider the statement of Abdul Kader and Bakruddin, the witnesses cited as 5th and 6th witnesses, the landlords of the petitioner's consultancy has made clear that the petitioner's consultancy have offered jobs to many clients who consult them and there is no complaint from any other client to whom the jobs were offered.

15.Accordingly, I am of the considered view that the charges laid against the petitioner remains unsustainable as there was no case of cheating made out. Therefore, I have no hesitation to quash the charge laid against the 1st petitioner in C.C.No.6863 of 2010 in as much as the petitioner is concerned.

16.In the result, this Criminal Original Petition is allowed and the C.C.No.6863 of 2010 on the file of the Learned XI Metropolitan Magistrate, Saidapet, Chennai stands quashed in as much the petitioner alone is concerned. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

vs

Sub Assistant Registrar

To

The XI Metropolitan Magistrate,
Saidapet, Chennai.

+1cc to Mr.J.Sivanandaraj, Advocate, S.R.No.23448

+1cc to Mr.C.E.Pratap, Advocate, S.R.No.23499

CRL.O.P.No.15535 of 2010
and
M.P.No.1 of 2010

rrs 10/01/2019



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