



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.06.2017

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THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.(MD) Nos.18492 of 2015 and 3769 of 2016
and M.P.(MD) No.1 of 2015
in Crl.O.P.(MD) No.18492 of 2015
& Crl.M.P.(MD) Nos.1900 & 1901 of 2016
in Crl.O.P.(MD) No.3769 of 2016

1. P.S.A.Akkayasamy ... Petitioner/A8 in Crl.O.P.(MD)18492/2015

1. G.Sekar
2. A.B.Selvaraj
3. D.Mahendran
4. M.Jayakumar
5. K.Meenakshi Sundaram
6. S.Thangaraj
7. S.Tamilselvan ... Petitioners/Accused in Crl.O.P.(MD) 3769/2016

-vs-

A.Habib Mohammed ... Respondent in both petitions

Prayer Crl.O.P.(MD) No.18492 of 2015: Petition filed under Section 482 of Code of Criminal Procedure to call for the records relating to the private Complaint in C.C.No.54 of 2014 on the file of learned Judicial Magistrate No.1, Madurai and quash the same.

Prayer Crl.O.P.(MD) No.3769 of 2016: Petition filed under Section 482 of Code of Criminal Procedure to call for the proceedings in C.C.No.54 of 2014 on the file of the Judicial Magistrate No.1, Madurai so far as the petitioners are concerned and to quash the same and grant such other relief or reliefs that this Honourable Court may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner : Mr.R.Gandhi
(in Crl.O.P.(MD)18492/2015)
Mr.N.Subramanian
(in Crl.O.P.(MD) 3769/2016)
For Respondent : Mr.T.R.Subramanian

Reserved on	Pronounced on
07.06.2017	14.06.2017



C O M M O N O R D E R

The petitioners/accused in both these petitions seek to quash the case in C.C.No.54 of 2014 on the file of learned Judicial Magistrate No.1, Madurai.

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2. The complainant/respondent has initiated prosecution for the alleged offences under Sections 167, 181, 193, 203, 406 and 420 IPC in C.C.No.54 of 2014 before the learned Judicial Magistrate No.I, Madurai against eight accused, challenging which the accused are before this Court.

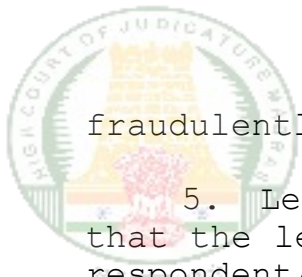
3. Heard the learned counsel for the petitioners and the learned counsel for the respondent.

4. The factual matrix of the case is as under:

4.1. The accused 1 to 7 are Officials of Tamil Nadu Industrial Investment Corporation Limited (in short "the TIIC"), which was constituted under the State Financial Corporations Act, 1951 (hereinafter referred to as "the Act"). The complainant borrowed around Rs.19,00,000/- from the TIIC in the year 1995 by mortgaging his two properties for the purpose of establishing an Industry. After the loan was sanctioned, it came to light that the complainant had surreptitiously removed the machineries and goods from the bonded shop floor without the knowledge of the TIIC and therefore, a case in Crime No.20 of 1997 under Sections 406 and 420 IPC was registered against the complainant by the District Crime Branch, Madurai on the complaint lodged by Sekar (A1), who was the Manager of the TIIC at the relevant point of time. After the investigation, the District Crime Branch, Madurai filed a charge sheet in C.C.No.26 of 1999 before the learned Judicial Magistrate No.I, Madurai for the said offences against the complainant herein. In the trial in C.C.No.26 of 1999, Sekar and other Officials were examined as prosecution witnesses.

4.2. During the pendency of the criminal prosecution, the complainant defaulted in making payment to the TIIC towards the mortgaged loan and therefore, the TIIC brought the properties of the complainant to public auction on 30.11.2017. Since there was no bidder, second auction was held on 23.01.2008 and on that day also, there was no bidder for the properties. Subsequently, third auction was held on 27.02.2008, in which A8 emerged as a successful bidder and a sale certificate was issued in favour of A8 on 24.03.2009.

4.3. The complainant was acquitted in C.C.No.26 of 1999 by the Judicial Magistrate No.I, Madurai on 17.07.2012. After waiting for a year and ensuring himself that no appeal against his acquittal is filed, the complainant has lodged the present complaint on 05.08.2013 before the Judicial Magistrate No.I, Madurai against A1 to A7, who are TIIC Officials and A8, who was the successful bidder, alleging that they had all conspired to bring his property to sale



fraudulently.

5. Learned counsel for the respondent/complainant contended that the learned Judicial Magistrate No.I, Madurai had acquitted the respondent/complainant in C.C.No.26 of 1999, which itself shows that the allegation of the TIIC Officials that the respondent/complainant had removed the machineries as false. He also contended that without obtaining any permission from the Magistrate, the TIIC had brought the properties to sale, which is illegal.

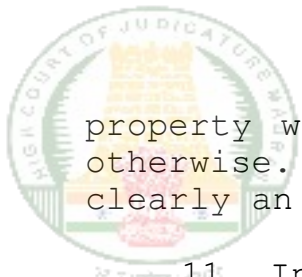
6. Per contra, learned counsel for the accused submitted that the TIIC officials had granted loan in discharge of their official duty and when they found that the complainant/respondent had surreptitiously removed the pledged machinery from the godown without their knowledge, the TIIC had to give a Police complaint. Just because the Criminal Court had acquitted the respondent/complainant, it does not mean that the sale that was done in accordance with law and in exercise of powers conferred by the Act, was a fraudulent one. The accused also contended that though the sale was completed as early as 24.03.2009, the respondent/complainant did not challenge the same before any Civil Forum and therefore, the present complaint is a clear abuse of process of law.

7. In reply to the above, learned counsel for the respondent/complainant submitted that the respondent/complainant had given a complaint against the TIIC officials to the Superintendent of Police and since no action was taken, the respondent/complainant was forced to file the present private complaint.

8. This Court gave its anxious consideration to the rival submissions.

9. On a perusal of the judgment of acquittal passed by the learned Judicial Magistrate No.I, Madurai in C.C.No.26 of 1999, it is seen that the Magistrate has not given a finding that a false case has been foisted against the respondent/complainant by the TIIC. On the contrary, in Paragraph Nos.14, 23 and 24 of the judgment, the Trial Court had held that the prosecution had failed to prove that the accused had stealthily removed those machineries. In fact, in Paragraph No.14, it is stated that Sekar/PW1 in his complaint has given a list of 15 items that have been removed by the respondent/complainant, but the prosecution had failed to compare it with the seizure mahazar that was prepared by the Police. Such reconciliation evidence should have been let in by the Assistant Public Prosecutor, who was in-charge of the case and not by the prosecution witnesses *suo motu*. The respondent/complainant has been acquitted only on benefit of doubt by stretched reasonings.

10. It is not the case of the respondent/complainant that he had discharged the liability and in spite of that, his property was brought to sale. Admittedly, he was a defaulter and therefore, his



property was brought to sale only in accordance with law and not otherwise. Therefore, the present prosecution of the accused is clearly an abuse of process of law, which deserves to be quashed.

11. In the result, these petitions are allowed and the entire prosecution in C.C.No.54 of 2014 on the file of the learned Judicial Magistrate No.1, Madurai is hereby quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To:

The Judicial Magistrate No.1,
Madurai.

- + 1 CC TO Mr.T.R.SUBRAMANIAN, ADVOCATE IN SR No. 60247
- + 1 CC TO M/s.R.GANDHI, ADVOCATE IN SR No. 60253
- + 1 CC TO Mr.N.SUBRAMANIAN, ADVOCATE IN SR No. 60319

AR
TE/GT/SAR-IV : 27/06/2017 : 4P/5C

ORDER IN

Crl.O.P.(MD) Nos.18492 of 2015 & 3769 of 2016
and M.P.(MD) No.1 of 2015
in Crl.O.P.(MD) No.18492 of 2015
& Crl.M.P.(MD) Nos.1900 & 1901 of 2016
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