



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.11.2017

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CrI.O.P. (MD) No.635 of 2011

and

M.P. (MD) Nos.1 and 2 of 2011

A.Sivamurugesan ... Petitioner/Accused No.6
Vs.

1. The State Represented by
The Inspector of Police,
District Crime Branch,
Virudhunagar District.
(In Crime No.4 of 2009) ...1st Respondent/Complainant

2. Chandrakanth Changappa Changanava,
Partner,
S.P.Changanavar & Sons,
A.P.M.C. Yard,
Plot No.127, Post Box No.17,
Kadhak, 582101,
Karnataka State. ...2nd Respondent/Defacto
Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the charge sheet in C.C.No.87 of 2010 on the file of the judicial Magistrate Court No.2, Virudhunagar and quash the same as illegal as far as the petitioner is concerned.

For Petitioner : Mr.Sulthan Basha
for M/S.M.Ajmal Associates

For 1st Respondent : Mr.K.Anbarasan
Government Advocate (Criminal side)

For 2nd Respondent : No appearance

O R D E R

This Criminal Original Petition has been filed to quash C.C.No.87 of 2010, pending on the file of the Judicial Magistrate No.2, Virudhunagar.

2.The second respondent herein filed a complaint against A1 and A2 before the respondent police on 29.04.2009 stating that one Ravi Chandran and Rajadurai, who are arrayed as Accused Nos.1 and 2, were partners in Changanava & Sons and doing partnership business of selling and purchasing Channa Gram . When the second



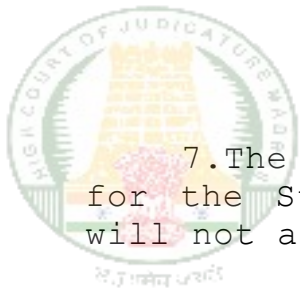
respondent came down to Virudhunagar, Ravichandran/A1 introduced himself as he was doing Channa Gram business, for commission basis. Believing his words, the defacto complainant had accepted his request and sent Channa Grams on various dates as per the orders placed by him. The Channa Grams were also received by one Rajadurai/A2. Thereafter, they did not paid the amount to the defacto complainant and thereby, the first respondent registered a case in Crime No.4 of 2009 for the offences punishable under Sections 406 and 420 I.P.C. against A1 and A2.

3.The learned counsel appearing for the petitioner submitted that after completion of investigation, the respondent police has filed a charge sheet against A1 and five others, arraying the petitioner as A6 alleging that subsequent to the receipt of Channa Gram, A1 and A2 sold the same to A3 to A6 and they were kept the Channa Gram for selling the same to the public. Hence, the petitioner has filed this quash petition before this Court.

4.The learned counsel appearing for the petitioner further submitted that the petitioner did not aware of the business transaction between A1, A2 and the defacto complainant. The petitioner was running Agency, namely, V.A.P. Agency and doing Channa Gram business and exported the Channa Gram to all over the country. The petitioner purchasing Channa Gram through various Agencies and A1 and A2 are one among them and believing their words, the petitioner purchased the Channa Gram from them.

5.The learned counsel for the petitioner further submitted that the petitioner cannot be arrayed as an accused for the simple reason that he has purchased Channa Grams from A2 and purchase of goods would not make out any offence as alleged by the prosecution and the entire sale consideration was paid and the petitioner is also having proper receipts to that effect and therefore, the entire charge sheet as against the petitioner is unsustainable in law.

6.The learned counsel for the petitioner also submitted that the respondent police failed to consider the fact that mere possession of any stolen good will not make out any offence punishable under Section 414 I.P.C. and the respondent police ought to have seen that the accused must have possessed the said stolen property knowing fully well, the same was stolen by other accused and as such, no offence under Section 414 I.P.C., is made out as against the petitioner. In order to prove any offence with the aid of Section 34 I.P.C., the defacto complainant has to establish that all the accused persons had common intention to commit the offence and the petitioner had acted in furtherance of such common intention. The failure on the part of the prosecution to consider the same will vitiate the entire charge sheet and as such, the charge sheet does not stand in the eye of law.



7. The learned Government Advocate (Criminal Side) appearing for the State fairly conceded that Sections 414 and 34 I.P.C., will not attract against the petitioner, which read as follows:

'' 414. Assisting in concealment of stolen property

Whoever voluntarily assists in concealing or disposing of or making away with property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

34. Acts done by several persons in furtherance of common intention

When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.''

8. On perusal of the abovesaid provisions, it is clear that whoever voluntarily assists in concealing or disposing of or making away with property, which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term, which may extend to three years, or with fine, or with both.

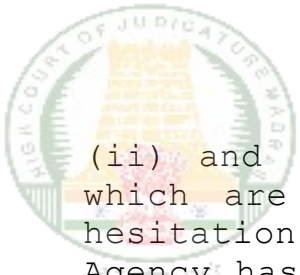
9. In **R.P. Kapur Vs. State of Punjab [AIR 1960 SC 866]**, the Hon'ble Apex Court had summarised some of the categories of cases where the inherent power under Section 482 of the Code could be exercised by the High Court to quash criminal proceedings against the accused. These are: [AIR P.869, Para 6]

(i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings e.g. want of sanction;

(ii) where the allegations in the first information report or the complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

10. Applying the principles laid down by the Hon'ble Apex Court in the abovesaid decisions cited supra, more particularly, Clauses



(ii) and (iii) of **R.P. Kapur v. State of Punjab** (cited supra), which are squarely applicable to the case on hand, I have no hesitation to quash the complaint. Admittedly, the Law Enforcing Agency has registered the case against A1 and A2 for the offences under Sections 406 and 420 and against A3 to A6 for the offences under Section 414 r/w. Section 34 I.P.C as discussed above, the said penal provision is not applicable against the petitioner.

11. Further, the complaint does not make any specific allegation or implicating the penal provision against the petitioner and when there is no specific allegation with regard to commission of offence against the petitioner, this Court has no other option except to quash C.C.No.87 of 2010 pending on the file of Judicial Magistrate Court No.2, Virudhunagar, in respect of the petitioner alone. Accordingly, C.C.No.87 of 2010 pending on the file Judicial Magistrate Court No.2, Virudhunagar, is quashed in respect of the petitioner alone and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(crl side)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate Court No.2,
Virudhunagar.
2. The Chief Judicial Magistrate,
Srivilliputhur at Virudhunagar.
3. The Inspector of Police,
District Crime Branch,
Virudhunagar District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.M.Ajmal Associates, Sr.No.86999

VSG

VB/SV/MMS/SAR1/29/11/2017/4P/6C

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