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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2018

CORAM

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

Crl.O.P. No.24780 of 2015

and

M.P.No.1 of 2015 and Crl.M.P.No.4943 of 2018

1.Thaiaga Exports Pvt. Ltd.,
Rep. by its Managing Director,
No.50, 14th Cross, 1st Floor,
Sirugeri Ram Street,
Anna Nagar Extension,
Puducherry.

2.Anbalagan,
Managing Director,
Thaiga Exports Pvt. Ltd.,
No.50, 14th Cross 1st Floor,
Sirugeri Ram Street,
Anna Nagar Extension,
Puducherry.

3.Devajothi,
Director,
Thaiga Exports Pvt. Ltd.,
No.50, 14th Cross 1st Floor,
Sirugeri Ram Street,
Anna Nagar Extension,
Puducherry.

...Petitioners

vs.

1.The State rep. by
The Inspector of Police,
CBCID Police Station,
Puducherry.

2.Vijayakumar

...Respondents

Criminal Original Petition filed under Section 482, Cr.P.C.
to call for the records relating to Crime No.14 of 2015 on the
file of Inspector of Police, CBCID Police Station, Puducherry
and quash the same.

For petitioner : Mr.AR.L.Sundaresan
Senior Counsel
for M/s.AL.Gandhimathi



For Respondent : Mr.Bharath Chakaravarthy for R1
Public Prosecutor (P)
Mr.M.Palanivel for R2

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O R D E R

On the complaint lodged by the second respondent, the first respondent registered a case in Crime No.14/2015 under section 420 I.P.C.read with 34 I.P.C. against the petitioners herein, for quashing of which, the petitioners are before this Court.

2.Heard Mr.AR.L.Sundaresan, learned Senior counsel for the petitioners/Accused, learned Public Prosecutor (Pondicherry) for the first respondent and Mr.M.Palanivel, learned counsel for the second respondent/defacto complainant and

3.On a reading of the complaint given by the defacto complainant, it is alleged that the accused had taken an amount of Rs.41 lakhs from the defacto complainant on the promise of allotting equity shares to the defacto complainant and his family members but however, the accused had not invested the amount as promised nor returned the amount.

4.Mr.AR.L.Sundaresan, learned Senior Counsel for the petitioners submitted that in connection with the allegation, the defacto complainant and his family members have filed Civil Suits in O.S.Nos.58/2015, 53/2015 and 109/2015, which are all pending in the Civil Court in Pondicherry and that he has thereafter chosen to file the present complaint before the Judicial Magistrate, Pondicherry and that on the direction of the Magistrate under Section 156(3) Cr.P.C., the first respondent police have registered the F.I.R. Learned Senior Counsel further contended that the transaction is purely civil in nature and that the second respondent is a retired police official and with his clout in the police department, he has managed to have the FIR registered.

5.Per contra, Mr.Palanivel, learned counsel for the defacto complainant submitted that the suits were filed for recovery of the amount, as failure to file the suit may result in the defacto complainant losing his very right to get back the money, however, he contended that the filing of the suit will not make it a civil transaction, when it has been shown that the accused had the necessary mens rea at the time when he received sum of Rs.41 lakhs for cheating the defacto complainant. In this regard, the accused have taken a stand before this Court that the defacto complainant had borrowed money from the accused and the sum of Rs.41 lakhs was returned by the defacto complainant towards the loan taken and that the sum of Rs.41 lakhs was not



collected by the accused on the promise of allotting equity shares, as alleged by the defacto complainant now.

6. Learned Public Prosecutor for the first respondent submitted that the investigation conducted so far revealed that the defacto complainant had not borrowed any money from the accused and that the defacto complainant had paid the accused Rs.41 lakhs only towards equity shares.

7. Thus, when there are disputed questions of fact inasmuch as it is the assertion of the accused that Rs.41 lakhs was paid by the defacto complainant towards pre existing debt and it is the version of the defacto complainant that Rs.41 lakhs was paid only towards equity shares, this Court cannot give a finding either way. Mere pendency of civil suits will not mean that a criminal prosecution cannot be maintained. Had the accused taken a stand that the defacto complainant had paid the sum of Rs.41 lakhs towards equity shares, that for some unforeseen reason, the accused was not able to raise the equity shares and thereby became indebted to the defacto complainant, then this Court can construe this as a simple civil transaction, since every breach of contract will not lead to a criminal prosecution. However, the accused has taken a stand that the defacto complainant had taken loan earlier and that he had paid Rs.41 lakhs only for the discharge of the said loan requires investigation especially in the light of the representation by the Prosecutor that the investigation conducted so far belies the version of the accused. Since the defacto complainant himself is a retired Superintendent of Police of Pondicherry cadre, interest of justice will be served, if Senior Superintendent of Police (Crime) is directed to monitor the investigation in Crime No.14/2015 and if it is found that the entire transaction is civil in nature, it is needless to state that the police shall close the FIR.

With the above direction, the criminal original petition is dismissed. The connected miscellaneous petitions are closed.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

vri



To

1. The Inspector of Police,
CBCID Police Station,
Puducherry.

2. The Public Prosecutor (Pondy),
High Court, Madras.

+1 CC to Mrs. A. L. Gandhimathi, Advocate sr 29087.

+1 CC to Mr. M. Palanivel, Advocate sr 28808.

Cr1.O.P. No.24780 of 2015

KS(CO)
SP(27/04/2018)