

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.07.2018
Pronounced on : 23.08.2018

CORAM
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.O.P.No.22755 of 2010
and
M.P.No.1 of 2010

S.P.Rajan,
Proprietor,
Grow Win Floritech,
No.175/1, Kamarajapuram,
[Opp. To Uzhavar Market],
Coonoor - 643 101,
The Nilgiris District. ... Petitioner/second accused

Vs.

N.Sekar,
S/o. Natesa Gounder,
Om Sakthi Earth Movers,
Majestic Lodge,
Mettupalayam Road,
Kothagiri,
The Nilgiris District,
[Crime No.50 of 2010] ... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the complaint in C.C.No.50 of 2010 on the file of the Judicial Magistrate Court, Kothagiri, Nilgiris District and to quash the same in so far as it relates to the petitioner.

For Petitioner : Mr.C.Santhosh Kumar for
Ms.AL.Ganthimathi

For Respondent : No appearance [Name printed]

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O R D E R

This Criminal Original Petition is filed to call for the records relating to the complaint in C.C.No.50 of 2010 on the file of the Judicial Magistrate Court, Kothagiri, Nilgiris District and to quash the same in so far as it relates to the petitioner.

2.The petitioner has filed the above quash petition against the private complaint filed by the respondent for the offences under Section 420 r/w 109 of the Indian Penal Code against the petitioner and one K.Vidyadaran/first accused. The above said complaint has been taken on the file by the learned Judicial Magistrate, Kothagiri in C.C.No.50 of 2010.

3.The case of the accused is respondent/complainant is that he is owning earth movers (JCB) and undertakes the work of excavation, levelling, etc., of the soil for various purposes. The first accused namely K.Vidyadaran carries on the business of Flori culture and the petitioner/second accused is a contractor of Flori culture project work.

4.It is further contended by the respondent that both the petitioner and the other accused had approached the respondent for the purpose of excavation and levelling of the land comprised in Survey Number 542 of Nedugala Revenue Village at the Kappatty Hamlet. Prior to the undertaking of the work by the complainant, there was an understanding between the parties that on the completion of the work done by the respondent, the petitioner and the other accused would pay the entire amount. Thus, taking the assurance from the petitioner and the other accused, the respondent had carried the work to the tune of Rs.7,00,000/- (Rupees Seven Lakhs only).

5.The other accused namely the first accused/K.Vidyadaran was instructed by the petitioner/second accused to pay the amount through cheque. Accordingly, the first accused at Kappatty had issued a cheque bearing No.091402 dated 04.03.2010 drawn on H.S.B.C. Bank, Coimbatore Branch, for Rs.7,00,000/- (Rupees Seven Lakhs only). At the time of issuance of the cheque, the petitioner and the other accused said to have assured that the cheque would be honoured.

6.Based on the assurance given by the petitioner/second accused and the first accused, the respondent had presented the cheque for encashment through his banker, State Bank of India, Coonoor Branch, the same was returned on 11.03.2010 with an endorsement "Account closed" and the same was intimated to the respondent through his banker on 18.03.2010.

7.This being the case, the petitioner herein had issued a notice on 21.04.2010, to the respondent to refrain from pestering the petitioner for payment of the said amount, for which the petitioner was no way concerned and it is the transaction and dispute between the respondent and the first accused namely K.Vidyadaran. On this ground the respondent had filed a private complaint. Aggrieved against the same, the petitioner had filed the above quash petition.

8.The contention of the learned counsel for the petitioner is that it is an admitted case of the respondent that the work was carried out on the assurance of the first accused namely K.Vidyadaran and the cheque bearing No.091402 dated 04.03.2010 for Rs.7,00,000/- (Rupees Seven lakhs only) being the amount due to the respondent for the work done has been issued by the first accused and this petitioner/second accused had no role in the transaction between the first accused and the respondent. The petitioner/second accused herein is only a contractor of Flori culture work, who was engaged by the first accused.

9.The learned counsel for the petitioner further contended that the Lower Court mechanically, without properly appreciating the facts had taken cognizance of the complaint, though, there is no prima facie case made against the petitioner. Further submitted that the respondent, who has carrying out the Flori culture project work and the first petitioner is doing the business of Flori culture, who had engaged and given job work to the petitioner/second accused. On a bare perusal of the legal notice and the rejoinder, it is apparent and evident that the petitioner/second accused has not abetted the commission of the offence of cheating by the first accused.

10.This Court on perusal of the complaint and the documents filed and upon the arguments of the petitioner finds that there is no offence made out against the petitioner/second accused to proceed with. Further, as per the documents enclosed to the complaint, it is seen that the petitioner/second accused had no role in the transaction between the respondent and the said Vidyadaran. Thus, looking the case and taking the entire averments on the face value, then also no prima facie case is made out to proceed against the petitioner.

11.It could be seen that this case has been referred to the Tamil Nadu Mediation and Reconciliation Center, High Court, Madras, thereafter, since nothing frutified in the mediation. The above case has been referred back to this Court and further, it could be seen from the adjudication dated 20.09.2017, Mr.A.Bobblie, learned counsel appeared for the respondent submitted that he had received instruction from the party and he has withdrawn the memo and he has also handed over the papers to the respondent and the Registry is directed to take fresh notice to the respondent. Notice has been sent to the respondent and his name has been printed, despite several adjournments, none appeared on behalf of the respondent.

12.In view of the above this Court feels that the case against the petitioner alone merits consideration and the quash petition is allowed. In effect the C.C.No.50 of 2010 on the

file of the Judicial Magistrate Court, Kothagiri, Nilgiris District is quashed.

13. Accordingly, the Criminal Original Petition stands allowed. Consequently the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate,
Kothagiri.

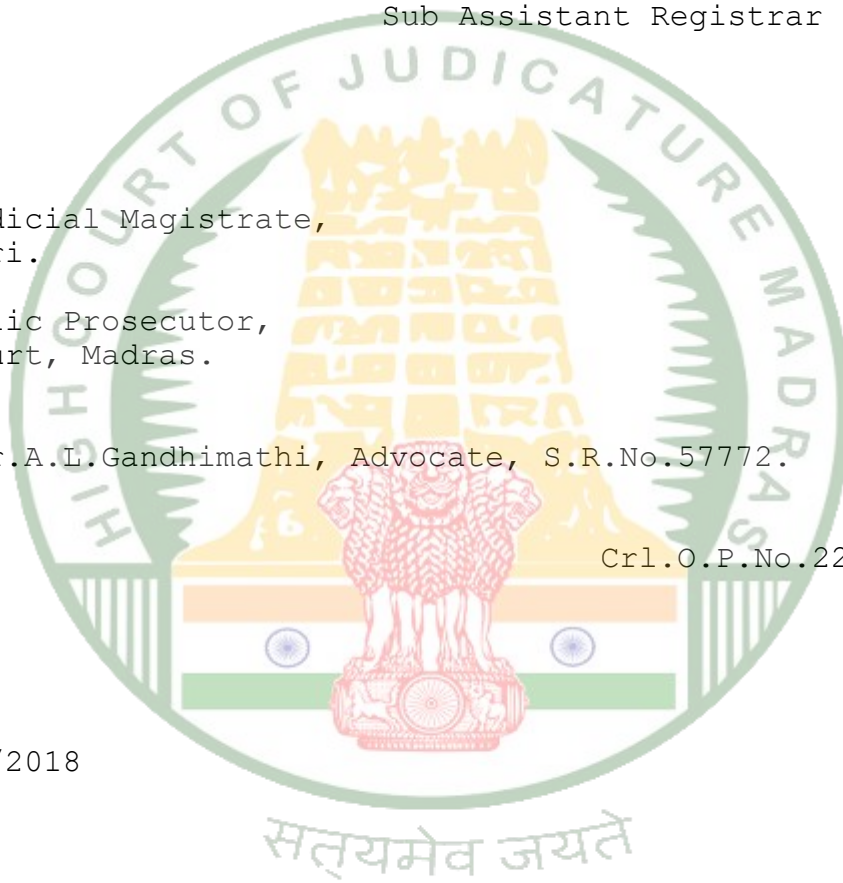
2.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.A.L.Gandhimathi, Advocate, S.R.No.57772.

CrI.O.P.No.22755 of 2010

Pvs (CO)

rrs 14/09/2018



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