

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.22511 of 2014

Amala Valentine

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep by the Inspector of Police,
M.6, Maraimalai Nagar Police Station,
Kancheepuram District.

2. Dr.C.Sridevi Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records relating to Crime No.34 of 2014 on the file of the Inspector of Police M-6, Maraimalai Nagar Police Station, Kancheepuram District and quash the same insofar as it relates to the petitioner.

For Petitioner : Mr.R.N.Amarnath

For Respondents

For R1 : Mr.Mohammed Riyaz
Additional Public Prosecutor.
For R2 : Mr.M.Muniruddian Sheriff

O R D E R

This Petition is filed to quash the FIR in Crime No.34 of 2014 registered for the offences under Sections 294(b), 506 (i), 406 and 420 of IPC.

2. The learned counsel appearing for the petitioner would submit that the petitioner is arraigned as A2. Her husband is a building contractor in the name and style of M/s. J.J. Green Energy India Private Limited. The said company entered into construction agreement for the construction of commercial complex with the second respondent/defacto complainant. The second respondent deposited money in the account of another company known as M/s.Building Comfort System Chennai Pvt. Ltd., in which the petitioner's husband is the Managing Director. The petitioner is also one of the Director of the said company. The petitioner's husband issued notice dated 11.03.2013, thereby

demanding a sum of Rs.13,12,600/- from the defacto complainant as the balance amount for the construction work done by the petitioner's husband. Immediately after receipt of the same, the defacto complainant lodged a complaint before the commissioner of Police and the same was closed. Thereafter on the very same set of allegations, again the defacto complainant lodged a complaint before the first respondent and the same was registered in Crime No.34 of 2014. He further submitted that the allegations are that the defacto complainant/second respondent paid a sum of Rs.1,10,00,000/- for the purpose of construction and a sum of Rs.60 lakhs for the purpose of installing generators, lifts, air conditioner and electrical and interior works. After receipt of Rs.60 lakhs, no work was done by the petitioner's husband and when the defacto complainant demanded the said money, the husband of the petitioner threatened him with dire consequences. Therefore, the allegation made in the FIR is completely civil in nature and no offence is made out as against the petitioner. Therefore, he prayed to quash the FIR.

3. The learned counsel appearing for the second respondent submitted that the petitioner and her husband cheated the defacto complainant to the tune of Rs.60 lakhs and when the defacto complainant questioned the same they threatened the defacto complainant with dire consequences. They also did not complete the work of installing generators, lifts, air conditioner and electrical and interior work as undertaken by them. Therefore, he prayed for dismissal of the quash petition.

4. The learned Additional Public Prosecutor would submit that there are two accused in this case, in which petitioner is arraigned A2. Based on the complaint which was forwarded by the Commissioner of Police, the first respondent registered a case in Crime No. 34 of 2014 for the offences punishable under Sections 294(b), 506(i), 406 and 420 of IPC. The investigation is still pending. Therefore, he prayed for dismissal of this petition.

5. Heard Mr.R.N.Amarnath, learned counsel appearing for the petitioner, Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the first respondent and Mr.M.Muniruddin Sheriff, learned counsel appearing for the second respondent.

6. The case has been registered as against the petitioner and her husband in Crime No. 34 of 2014 for the offences under Sections 294(b), 506(i), 406 and 420 of IPC, in which the petitioner arraigned as A2. The allegation is that the defacto complainant entered into an agreement with the petitioner's company and also paid a sum of Rs.1,70,00,000/- for construction of commercial complex. But the petitioner's company did not

complete the construction work and also failed to install generators, lifts, air conditioner etc., thereby they cheated the defacto complainant to the tune of Rs.60 lakhs.

7. Admittedly, it is a contract entered between the petitioner's company with the defacto complainant to construct a commercial complex. They also entered into a construction agreement dated 09.06.2011. It is also seen that there was a due from the defacto complainant, as such the petitioner's company issued notice to the defacto complainant on 11.03.2013 thereby call upon the defacto complainant to pay a sum of Rs.13,12,600/- as balance of construction cost, within a period of 10 days from the date of receipt of the said notice. It is also seen from the notice that, what are all the work done by the petitioner's company and what are all the amount paid by the defacto complainant. After receipt of the said notice, the defacto complainant/second respondent lodged a complaint alleging that the petitioner's company did not complete the work as agreed by them. Therefore, it is completely business traction on the construction agreement and civil in nature.

8. It is relevant to rely the offence under Section 415 of IPC, which reads as follows :-

"415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat". Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations :-

.....
(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money. A not intending to repay it. A cheats.

(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby

dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract."

Accordingly, whatever the breach of contract, it is only a civil liability and it cannot be colored as criminal offence. Therefore, no offence is made out as against the petitioner. Hence, this Court is inclined to quash the FIR as prayed for.

9. In the result, the Criminal Original Petition is allowed and FIR in Crime No. 34 of 2014 on the file of the first respondent police is quashed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

rts

To

1. The Inspector of Police,
M.6, Maraimalai Nagar Police Station,
Kancheepuram District.
2. The Public Prosecutor,
High Court of Madras,
Chennai.

+1cc to Mr.R.N.Amarnath, Advocate Sr.14264

CRL.O.P.No.22511 of 2014

rr[co]
srg 18/03/2019