

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.15846 of 2014
and
Crl.M.P.No.1 of 2014

R.Palanivelu

...Petitioner

Vs.

1. The State rep.by,
The Inspector of Police,
J-7, Velachery Police Station,
Chennai.

2.Mrs. Mani Jana Bai

...Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records in Crime No.452 of 2014 on the file of the Inspector of Police, J-7, Velachery Police Station, Chennai and quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.K.S.Kumar

For Respondents

For R1 : Mr.M.Mohamed Riyaz

Additional Public Prosecutor

For R2 : Mr.A.Arumugam

ORDER

The petition is directed as against the FIR in Crime No.452 of 2014 on the file of the first respondent registered for the offences under Sections 406, 420, 341, 506(ii) IPC r/w 120(b) of IPC.

2. The learned counsel for the petitioner would submit that the petitioner is second accused. The first accused is a construction company running by his wife in the name of the style of M/s.Gowtham Associates. The offences registered by the

first respondent are under Sections 406, 420, 341, 506(ii) IPC r/w 120(b) of IPC and there is absolutely no allegations and averments to attract the offences as against the petitioner. In fact, the first respondent did not registered the case and after receipt of the complaint, they conducted enquiry and closed the same. At that time, the second respondent filed a direction petition before this Court and on the directions of this Court, the first respondent registered the case as against the petitioner.

2.1. Even assuming that the allegations made in the complaint are true, the criminal case cannot be registered as against the petitioner, since the allegations are civil in nature. It has been given criminal colour. The second respondent without approaching the civil Court in a short cut mode, he preferred a false complaint before the first respondent. Therefore, he prayed for quashing the FIR.

3. The learned counsel appearing for the second respondent submitted that first accused is none other than the wife of the petitioner herein. Since the petitioner is working in the Chennai Metropolitan Development Authority, the construction company is running by his wife i.e., the first accused in the name of style of M/s.Gowtham Associates. Further he submitted that they entered into a construction contract with the defacto complainant by an agreement dated 19.07.2012 in which, there is a specific condition that the construction shall be completed within a period of 12 months from that date among other conditions. Total construction is fixed for a sum of Rs.90,91,500/- including for obtaining planning and building permissions. Without completing the construction work, the house warming ceremony was held on 26.08.2013. The petitioner did not complete the entire construction and simply left the premises. In fact, the defacto complainant paid total sum of Rs.1,51,82,340/-, Even though they did not complete the entire work and also did not hand over the completely constructed premises within the time framed in the agreement dated 19.07.2012. Therefore, he prayed for dismissal of this quash petition.

4. The learned Additional Public Prosecutor submitted that there are two accused in this case and the petitioner is the second accused. The first accused, who is none other than the wife of the petitioner herein entered into a construction agreement with the defacto complainant and the petitioner is no way connected with the said construction agreement. Further he submitted that as per the Section 415 Illustration (g) of IPC, no offence has been made out as against the petitioner.

5. Heard Mr.K.S.Kumar, learned counsel appearing for the petitioner, Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the first respondent and Mr.A.Arumugam, learned counsel appearing for the second respondent.

6. The petitioner is arraigned as second accused. There are totally two accused. The first accused is none other than the wife of petitioner and also the proprietrix of a construction company in the name and style of M/s. Gowtham Associates. Admittedly, the first accused and the defacto complainant entered into a construction agreement dated 19.07.2012, and the first accused agreed to construct a individual house. Thereafter there was a dispute between the first accused and the defacto complainant in respect of the payment of money and also further allegation that the first accused did not complete the construction within a stipulated period.

7. It is also seen that thereafter the second respondent also filed a suit in O.S.No.404 of 2014 on the file of this Court for recovery of money as against the first accused. In fact, the first accused also filed counter claim in the said suit and the suit is pending for trial. Therefore, no offence has been made out as against the petitioner as well as the first accused. It is a clear case of Civil in nature and it has been given criminal colour by the second respondent and it is nothing but clear abuse in process of law. Therefore, this Court is inclined to quash the proceedings.

8. Accordingly, this criminal original petition is allowed and FIR in Crime No.452 of 2014 on the file of the first respondent police is hereby quashed. Consequently, connected miscellaneous petition is closed.

jas/rts

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

To

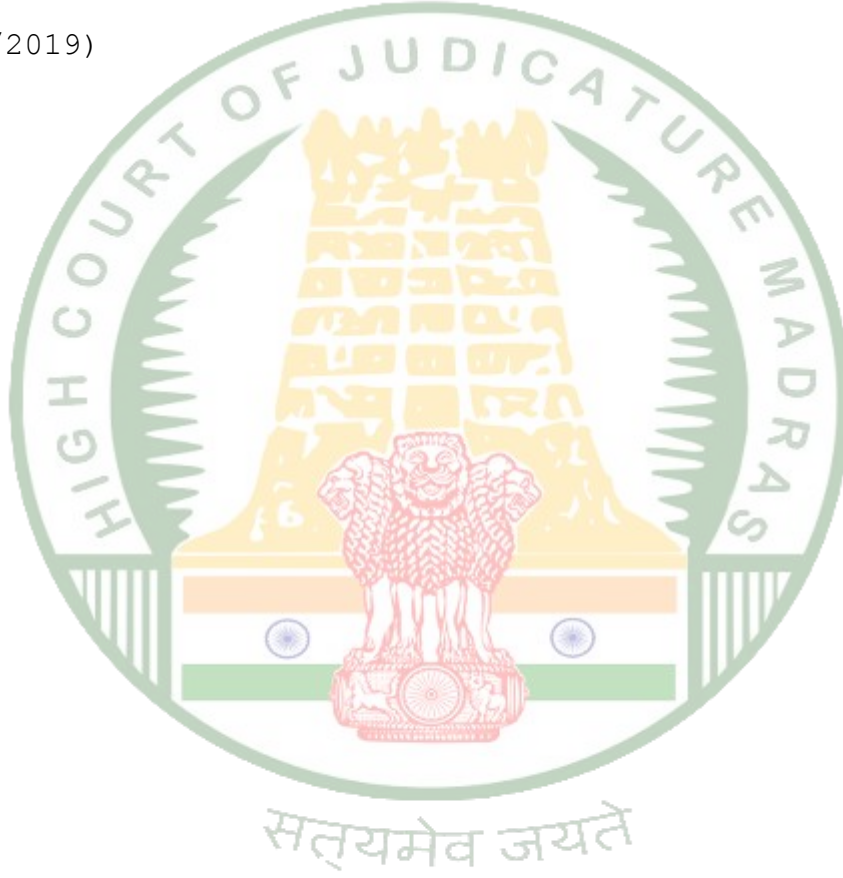
1.The Inspector of Police,
J-7, Velachery Police Station,
Chennai.

2.The Public Prosecutor,
High Court, Madras.

+1cc to M/s.K.S.Kumar, Advocate, SR.No. 18792
+1cc to M/s.A.Arumugam, Advocate, SR.No. 18797

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Spd (CO)
Kak (04/04/2019)



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