

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2019

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Cr1.O.P.No.28130 of 2014

1.Miss. Hayati Binti Tamzir

2.Sivanesan

...

Petitioners

Versus

1.The State Rep.By its
The Inspector of Police,
Madhuranthagam Police Station,
Kancheepuram District.

2.Saravanan

...

Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to quash the First Information Report in Crime No.637 of 2014 on the file of Inspector of Police, Madhuranthagam Police Station, Kancheepuram District.

For Petitioners: Mr.S.Thirunavukkarasu

For R1 : Mr.E.Iyyapparaj, AGP

ORDER

- 1.This Criminal Original Petition has been filed by the petitioners who were arrayed as A1 and A2, seeking to quash the First Information Report in Crime No.637 of 2014 on the file of Inspector of Police, Madhuranthagam Police Station, Kancheepuram District, the first respondent herein.
- 2.The case of the petitioners is that their company namely M/S. UE Development India Private Limited, had contracted with Natural Authority of India for widening and maintenance of road from Tambaram to Tindivanam and for this purpose, the petitioners had retained a crusher unit (400 TPH). After expiry of the lease period, the petitioners decided to dispose of the crusher unit and accordingly they entered into a sale contract

with the Defacto Complainant Company namely M/S.JKS Construction Private Limited for total value for the Crusher Unit at Rs.1,60,00,000/-. Pursuant to the sale agreement M/S.JKS Construction Private Limited paid Rs.1,00,00,000/- on 04.09.2012. According to the petitioners on 15.08.2012, M/S.JKS Construction Private Limited took possession of the Crusher Unit by employing their security personnel and thereby the transaction of contract between the petitioners and M/S.JKS Construction Private Limited came to an end as early as on 10.10.2012. According to the petitioners, after completion of the transaction the defacto complainant namely, second respondent therein who is representing M/S.JKS construction Private Limited had lodged a complaint against the petitioner on the file of the first respondent, alleging that out of 66 parts of the plant, there were only 14 parts and thereby the petitioners cheated the defacto complaint company and committed offences punishable under Sections 420, 407, 294 (b), 506 (i) r/w 109 IPC, based on the complaint lodged by the defacto complainant, the FIR in Cr.No.1637 of 2014 has been registered on the file of the first respondent, seeking to quash the said FIR the petitioners have filed the present petition.

- 3.The learned senior counsel appearing for the petitioners would contend that the defacto complainant company entered into an unwritten agreement for a total consideration of Rs. 1,60,00,000/- out of which Rs.1,00,00,000/- has been paid and thereafter the defacto complainant has not evinced any interest to pay the balance amount to complete the entire transaction which prompted the petitioners to complete the transaction and with the knowledge of the defacto complaint company the petitioners sold out secondary machineries and the transaction came to an end by letter dated February 2014. He would further contend that the allegations contained in the FIR would constitute any offence in order to proceed against the petitioners and that it is a purely a civil case, but giving criminal colour and registered the FIR, which is liable to be quashed.
- 4.The case of the prosecution is that the petitioners had contract for building road for which they had taken over crushing unit at Silavattam village in which they had installed machine for crushing. After the road contract was over, they had entered into an agreement with the defacto complainant with regard to the primary and secondary unit. Thereafter they had handed over the primary unit to the defacto complainant after receiving one crore and the secondary unit had been sold to the third party. The petitioners are not in possession of the quarry. Under such circumstances, the defacto complainant lodged a complaint.

5. A perusal of the entire materials placed before this Court, it appears that the defacto complainant, entered with unwritten agreement with the petitioners for purchase of 400 PT Crusher plant situated at Pakkam quarry both primary and secondary plants consisting of 66 items of plants and machineries for a total consideration @ Rs.1,60,00,000/- out of which a sum of Rs. 1,00,00,000/- has been paid. The main allegations made by the defacto complainant against the petitioners are that when the defacto complaint company is ready and willing to make the balance amount of Rs.60,00,000/- and to take delivery of 66 items of plants and machineries, to their shock and surprise, when they visited the Pakkam quarry, they found that only 14 items of plants and machineries were available and the remaining as many as 55 items were not available since missing and later they came to know that without their knowledge, the petitioners have fraudulently sold away to the third party. Therefore the defaco complainant has lodged the complaint against the petitioners before the first respondent. Therefore, unless and until, investigation is completed, at this stage, it cannot be held that the petitioners are innocent and no offences alleged against them, have been committed by them.
6. Having perused the entire allegations made against the petitioners, this Court is of the view that prima facie case is made out to proceed against the petitioners, since the allegations would constitute commission of offence and ingredients of the offence are also made out. Admittedly the investigation is pending and if this Court interferes with the investigation in the present case, where the offence has been disclosed, the offences will go unpunishable and it would cause great prejudice to the defacto complainant who invested huge amount and they have not taken away the plant or machineries. At this stage, this Court is not inclined to quash the FIR.
7. In "Roy V.D. v. State of Kerala (2000) 8 SCC 590, the Hon'ble Supreme Court has observed thus:-

"18 It is well settled that the power under Section 482 Cr.P.C has to be exercised by the High Court, inter alia, to prevent abuse of the process of any court or otherwise to secure the ends of justice. Where criminal proceedings are initiated based on illicit material collected on search and arrest which are per se illegal and vitiate not only a conviction and sentence based on such material but also the trial itself, the proceedings cannot be allowed to go on as it cannot but amount to abuse of the process of the court; in such a case not quashing the proceedings would perpetuate abuse of the process

of the court resulting in great hardship and injustice to the accused. In our opinion, exercise of power under section 482Cr.P.C.to quash proceedings in a case like the one on hand, would indeed secure the ends of justice."

8. In "Zandu Pharmaceutical Works Ltd. & Orss. vs. Mohd. Sharaful Haque & Anr." (2005) 1 SCC 122 , the Hon'ble Apex Court observed thus:-

"8.....it would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

9. Therefore, at the stage of FIR, this Court while exercising its jurisdiction under section 482 Cr.P.C., cannot embark upon the enquiry whether the allegations in the FIR and thereupon to render definite finding about truthfulness or veracity of the allegations. These are matters which can be examined only by the concerned court after the entire material is produced before it on a thorough investigation and evidence is led.
10. For the foregoing reasons, the Criminal Original Petition fails and the same is dismissed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

jrs

To

1. The Inspector of Police,
Madhuranthagam Police Station,
Kancheepuram District.

2.The Public Prosecutor,
Madras High Court, Madras.

+1cc to Mr.S.Thirunavukkarasu, Advocate sr.102688

CrI.O.P.No.28130 of 2014

ln(co)
nr 28/01/2020



WEB COPY