

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.1383 of 2017
and Crl.M.P.No.13490 of 2017

R.Ramesh,
S/o.Radhakrishnan.

Petitioner/Accused

Vs.

1.State of Tamil Nadu,
Represented by
Special Sub-Inspector of Police,
District Crime Branch,
Kancheepuram District.

Respondent/Complainant

2.A.Rajeshwaran,
S/o.Arumugam Pillai.

Respondent/defacto
complainant

Criminal Revision filed under Section 397 r/w 401 of Cr.P.C.
to set aside the order dated 05.07.2017 passed in C.M.P.No.1661
of 2016 in C.C.No.395 of 2014 on the file of the Judicial
Magistrate Court No.II, Chengalpattu.

For Petitioner : Mr.D.Madhusudanan

For R1 : Mr.G.Ramar

Government Advocate (Crl.Side)

For R2 : Mr.Vimal B. Crimson

O R D E R

This criminal revision petition has been filed seeking to
set aside the order dated 05.07.2017 passed in C.M.P.No.1661 of
2016 in C.C.No.395 of 2014 on the file of the Judicial
Magistrate Court No.II, Chengalpattu.

2. For the sake of convenience, the parties will be referred
to by their name.

3. The long and short facts of the case are as under:

3.1 R.Ramesh and A.Rajeshwaran were thick friends. Ramesh was running a proprietary concern under the name and style of Bharat Equipments and Service, where welding equipments were manufactured. Ramesh applied for allotment of an industrial plot in Area-II, Chittamanur, Maraimalai Nagar, Kanchipuram District before the Chennai Metropolitan Development Authority (for brevity "the CMDA") and accordingly, the CMDA, by order dated 19.10.2004, allotted Plot No.1, Area-II, Chittamanur, Maraimalai Nagar, Kanchipuram District to Ramesh on various conditions. While that being so, Ramesh met with an accident, on account of which, he was unable to make payments to the CMDA. Therefore, he approached Rajeshwaran for financial help.

3.2 It is the case of Rajeshwaran that Ramesh has agreed to take him as a partner in the industrial concern. Therefore, Rajeshwaran made payments to the tune of Rs.6,99,500/- directly to the CMDA. It is the further case of Rajeshwaran that after getting payments, Ramesh did not take him as a partner and thus, cheated him.

3.3 On these allegations, Rajeshwaran lodged a police complaint, based on which, a case in Crime No.105 of 2011 was registered and after completing the investigation, the police have filed a final report in C.C.No.395 of 2014 before the Judicial Magistrate No.II, Chengalpattu, against Ramesh for the offences under Sections 406, 420 and 506(I) IPC. Ramesh appeared before the trial Court and filed C.M.P.No.1661 of 2016 in C.C.No.395 of 2014 under Section 239 Cr.P.C., for discharge, which has been dismissed by the Trial Court on 05.07.2017, aggrieved by which, Ramesh is before this Court.

4. Heard Mr.D.Madhusudan, learned counsel for the petitioner, Mr.G.Ramar, learned Government Advocate (Crl. Side) for the first respondent-State and Mr.Vimal B. Crimson, learned counsel for the second respondent.

5. This Court carefully perused the final report and accompanying documents. On a perusal of the same, it is seen that on the application made by Ramesh, the CMDA had allotted the industrial Plot No.1 to him in Area-II, Chittamanur, Maraimalai Nagar, Kanchipuram District vide allotment order dated 19.10.2004. According to the terms of the allotment, the property cannot be alienated by Ramesh to anyone for a minimum period of 8 years, within which, Ramesh was required to construct a factory and commence production. It is the case of Ramesh that he had borrowed money from his friend Rajeshwaran and that he had not entered into any agreement for admitting him as a partner in the industrial concern.

6. This Court perused the alleged agreement, which is undated and the same forms part of the records under Section 207 Cr.P.C.

7. The learned counsel appearing for Ramesh repudiated the very agreement by contending that it is a forged one.

8. However, the learned counsel appearing for Rajeshwaran refuted the same.

9. In an application filed for discharge under Section 239 Cr.P.C., this Court cannot go into the genuineness or otherwise of a document and the same has to be dealt with only during trial. Assuming for a moment that the said document is a genuine one, yet, in the opinion of this Court, it does not give any scope for holding that Ramesh had cheated Rajeshwaran. The allotment order issued by the CMDA was on 19.10.2004 and it stands only in the name of Ramesh. The impugned agreement is of the year 2005, as could be seen from the date of the stamp paper. Ramesh has taken a consistent stand that he had only borrowed money from Rajeshwaran and that he is ready and willing to repay the same.

10. On a conspectus of the facts obtaining in this case, this Court does not find any criminality in the transaction between Ramesh and Rajeshwaran and the prosecution for the offences under Sections 406, 420 and 506(I) IPC is clearly an abuse of process of law. Ramesh has handed over a sum of Rs.6,00,000/- by Demand Draft dated 22.08.2019 to Rajeshwaran in the open Court today, towards the payment made by him as full and final settlement of his claims.

In the result, this criminal revision petition is allowed. The Trial Judge and the respondent/police are directed to hand over the original receipts for the payments made to the CMDA to the accused within two weeks from the date of receipt of a copy of this order, after keeping on file the certified photocopy of the same. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

nsd

To

1.The Judicial Magistrate No.II.
Chengalpet.

2.Special Sub-Inspector of Police,
District Crime Branch,
Kancheepuram District.

3.The Public Prosecutor,
High Court, Madras.

CC:The section officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.R.Balakrishnan Advocate, S.R.No. 73286

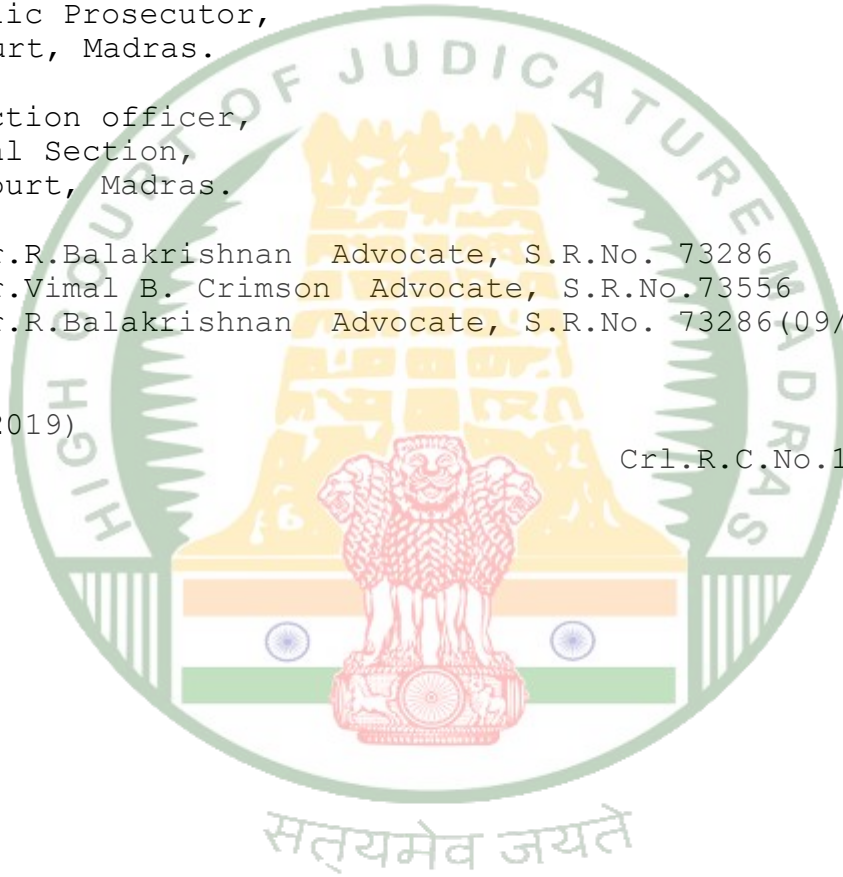
+1cc to Mr.Vimal B. Crimson Advocate, S.R.No.73556

+2cc to Mr.R.Balakrishnan Advocate, S.R.No. 73286(09/09/2019)

MP(CO)

CB(06/09/2019)

Crl.R.C.No.1383 of 2017



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