



BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

DATE : 20.11.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

CRL. R.C. (MD) NO.625 OF 2019

M.Raveendran

.. Petitioner

- Vs -

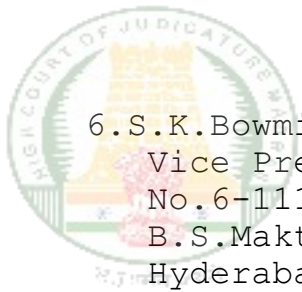
1.M/s Dharti Dredging and Infrastructure Ltd.,
No.1113/2, DDIL Bhavan,
B.S.Maktha,
Begampet,
Hyderabad - 500 016.

2.A.Rajendra S/o Akumalla,
Chairman and Managing Director of DDIL,
Plot No.148, Ravi Colony,
Tirumulgherry,
Secunderabad,
Andhra Pradesh - 500 015.

3.Rajeshkumar Radheyshyam Jhun Jhunwala
Finance Director of DDIL,
No.14, Chowpatty View,
Morvi Lane,
Chowpatty Sea Face Mumbai - 400 007.

4.Alur Vijayalakshmi
Whole Time Director of DDIL,
Plot No.148, Ravi Colony
Tirumulgherry, Secunderabad,
Andhra Pradesh - 500 015

5.Rajkumar Agarwal,
Vice President Finance,
No.1/1, Hardutt Raj Chmaria Road,
A Block, 2nd Floor, Flat No.A-24,
Howrah - 711 101, WB India.



6.S.K.Bowmic
Vice President (Operation) of DDIL,
No.6-1113/2, DDIL Bhavan,
B.S.Maktha, Begampet,
Hyderabad - 500 016.

7.V.V.Reddy,
Executive Director of DDIL,
No.6-1113/2, DDIL Bhavan,
B.S.Maktha, Begampet,
Hyderabad - 500 016.

8.G.Y.V.Victor,
Deputy Chief Executive Officer DDIL,
C/o Rajendran Saraswathi Jeyanthi,
Door No.B-201, 1-02-601 to 609,
620, Jalvayu Towers, Lower Tank Bound Road,
Gandhi Nagar, Elahiguda,
Hyderabad - 500080.

.. Respondents

Criminal Revision Case filed u/s 397 r/w 401 of the Code of Criminal Procedure, to call for the records pertaining to the order dated 14.05.2019 made in Cr.M.P.No.5095 of 2019 on the file of the Judicial Magistrate No.III, Tuticorin and set aside the same.

For Petitioner : Mr.C.Mayilvahana Rajendran

For Respondent : Mr.T.Mohan for
Ms.D.Geetha (for R1, R2, R4, R6 and R7)

Respondents 3,5 & 8 : Services Awaited

ORDER

The criminal revision petition has been filed against the order of the learned Judicial Magistrate No.III, Thoothukudi in Cr.M.P.No.5095 of 2019 dated 14.05.2019 dismissing the private complaint filed by the petitioner herein under Section 200 of Cr.P.C alleging an offence against the first respondent company and its Directors under Sections 120(B), 420, 409, 415, 417, 406, 23, 34, 506(2) of IPC.

2.The facts, which gave rise to the filing of the present revision petition are briefly stated herein.

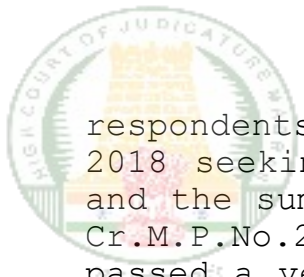
The petitioner had entered into a contract with the respondent company for carrying dredging operation in Vishakapattinam Port Trust. The contract was entered into between the parties on 18.05.2013. However, the contract came to be terminated midway on 03.03.2014 wherein a notice was issued terminating the contract. Thereafter, the petitioner herein had initiated arbitration



proceedings against the respondent company and its Directors on 24.04.2014. Simultaneously, the petitioner had given a complaint before the Superintendent of Police, Thoothukudi District against the respondents alleging various offences under the provision of IPC as mentioned above. The Superintendent of Police, directed the Inspector, District Crime Branch, Thoothukudi to investigate the case and thereafter, an FIR came to be registered in Crime No.59 of 2014 against the respondents for the offence under Section 420 of IPC. On completion of investigation, the District Crime Branch filed a closure report on 07.11.2015 on the ground that the entire case was civil in nature and also the dispute between the parties was pending before a civil Court in arbitral proceedings. Thereafter, the petitioner herein had filed a protest petition before the Judicial Magistrate No.I, Thoothukudi. The learned Judicial Magistrate, after considering the entire facts and circumstances of the case, dismissed the protest petition filed by the petitioner herein in Cr.M.P.No.151 of 2016 by order dated 23.03.2016. The petitioner herein also filed Crl.O.P (MD) No.6413 of 2016 before this Court seeking for change of investigation. He has also filed Crl.O.P. (MD) No.19649 of 2016 before this Court challenging the dismissal of protest petition by the trial Court on 23.03.2016. This Court heard all the petitions together and by order dated 06.03.2017 set aside the order passed by the trial Court dismissing the protest petition and remanded the matter back to the Judicial Magistrate No.I, Thoothukudi for disposal of the protest petition afresh. This Court has also directed the trial Court to nominate any other police officer in case further investigation is ordered.

3.Pursuant to the disposal of the case by this Court, the learned Judicial Magistrate No.I, Thoothukudi by order dated 18.04.2017, directed further investigation in Crime No.59 of 2015 by further directing the Superintendent of Police, Thoothukudi to nominate an Investigating Officer. Thereafter, a Deputy Superintendent of Police was appointed to conduct further investigation and after a detailed investigation, once again it was concluded that the entire case was civil in nature arising out of business transactions between the parties and filed closure report on 10.08.2017. The petitioner once again approached the learned Judicial Magistrate No.III, Thoothukudi by filing yet another protest petition in Cr.M.P.No.2049 of 2017. The Investigating Officer also filed detailed reply by placing reliance upon various materials and statements recorded from the witnesses. The trial Court ultimately by its order dated 16.12.2017 treated the protest petition as a private complaint and thereafter, sworn statement was recorded and subsequently, on 13.03.2018, the trial Court issued the summons to the respondents.

4.Challenging the order of the trial Court in taking cognizance of the private complaint and issue summons to the respondents, the



respondents have approached this Court in Crl.O.P. (MD) No.6798 of 2018 seeking to quash the private complaint initiated against them and the summons issued by the trial Court in Crime No.59 of 2014 in Cr.M.P.No.2049 of 2017. This Court vide its order dated 08.10.2018 passed a very detailed order quashing the proceedings i.e., private complaint filed under Section 200 Cr.P.C against the respondents herein. This Court concluded that it was abuse of process of Court, as repeatedly the petitioner herein is trying to give a criminal colour to a civil dispute between them.

5.Having failed in all his attempts, the petitioner once again filed complaint on 08.11.2018 under Section 200 Cr.P.C, as if there was change in circumstances and new facts were unearthed. The trial Court namely, Judicial Magistrate No.III, Thoothukudi dismissed the complaint which was numbered as Cr.M.P.No.5095 of 2019 on 14.05.2019 holding that there was no merit in the case. As against the dismissal of the private complaint, the criminal revision petition has been filed by the petitioner.

6.The learned counsel appearing for the petitioner would submit that certain new facts came to their knowledge which prompted the petitioner herein to file yet another protest petition. However, the learned Judicial Magistrate, who dealt with the protest petition, was simply influenced by the fact that earlier private complaint was quashed by this Court vide order dated 08.10.2018. According to the learned counsel, the dismissal of earlier complaint filed under Section 200 Cr.P.C is not a bar for approaching the Magistrate when new materials are unearthed, which would establish the fraud played by the respondents herein. Unfortunately, the learned Magistrate has passed cryptic order without dealing with the complaint in detail. The learned Judicial Magistrate has also wrongly concluded that the private complaint was filed for the second time, on the basis of the same set of facts without appreciating that certain new facts were stated in the private complaint.

7.The learned counsel would rely on a decision of the Honourable Supreme Court in **2003 SCC (Cri)425 [Mahesh Chand vs. B.Janardhan Reddy and another]** and it would particularly draw the attention of this Court in paragraph 8 and 19 which are extracted hereunder:-

"8.Mr. P.S. Narasimha, the learned counsel appearing on behalf of the appellant in support of the appeal, would, inter alia, submit that the High Court committed a manifest error in arriving at the said conclusion as there does not exist any legal bar in filing a second complaint. Strong reliance, in this connection, has been placed on a judgment of the Patna High Court in *Munilal Thakur & Ors. etc. v. Nawal*



Kishore Thakur & Anr. [1985 Crl.L.J.437] and a decision of a learned Single Judge of the Orissa High Court in *The District Manager, Food Corporation of India, Titilagarh v. Jayashankar Mund & Anr.* [1989 Crl.L.J.1578].

19. Keeping in view the settled legal principles, we are of the opinion that the High Court was not correct in holding that the second complaint was completely barred. It is settled law that there is no statutory bar in filing a second complaint on the same facts. In a case where a previous complaint is dismissed without assigning any reasons, the Magistrate under Sec. 204 Cr.P.C. may take cognizance of an offence and issue process if there is sufficient ground for proceeding. As held in *Pramatha Nath Taluqdar's case* (supra) second complaint could be dismissed after a decision has been given against the complainant in previous matter upon a full consideration of his case. Further, second complaint on the same facts could be entertained only in exceptional circumstances, namely, where the previous order was passed on an incomplete record or on a misunderstanding of the nature of complaint or it was manifestly absurd, unjust or where new facts which could not, with reasonable diligence, have been brought on record in the previous proceedings, have been adduced. In the facts and circumstances of this case, the matter, therefore, should have been remitted back to the learned Magistrate for the purpose of arriving at a finding as to whether any case for cognizance of the alleged offence had been made out or not. "

8. In the above case, the Hon'ble Supreme Court has clearly held that there was absolutely no bar for filing the second private complaint under Section 200 of Cr.P.C when new facts emerged which were not earlier brought on record. According to the learned counsel, the factum of payment of TDS, as if the dues were paid to the petitioner by the respondents came to the knowledge of the petitioner and without making any payment, the TDS has been deducted illegally and fraudulently. Therefore, the learned Judicial Magistrate ought to have applied her mind properly, but, unfortunately, the Magistrate was simply guided by earlier dismissal and dismissed the present petition.

9. Per contra, the learned counsel for the respondent company would strongly oppose the revision petition for the reason that the present private complaint filed by the petitioner herein is gross abuse of process of law. In the guise of setting out new facts, the petitioner has once again attempted to give a criminal colour to a purely civil dispute between the parties. The deduction of TDS and the related facts were already brought on record in the earlier



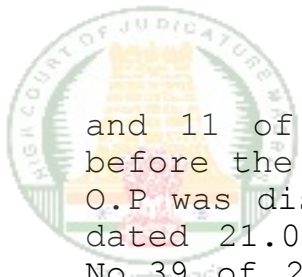
private complaint and this Court while quashing the private complaint against the petitioner herein and in favour of the respondents, has passed the detailed order and also observed that the petitioner herein was attempting to give a criminal colour to the civil dispute and repeated attempt by the petitioner to approach this Court is in abuse of process of Court. The learned counsel would draw the attention of this Court to the strong observation and conclusion reached by this court while quashing the private complaint vide its order dated 08.10.2018 in CrI.OP(MD)No.6798 of 2018. Particularly, he would draw the attention to the observation of this Court as detailed hereunder:-

"14.....The most important factor, which the Court below did not take into consideration is that the entire dispute is purely civil in nature and the second respondent instead of pursuing the remedy before the civil forum has attempted to give the dispute a criminal colour and has managed to keep the criminal case pending for the last four years. Not once, but twice the Police have thoroughly investigated this case and have filed closure reports. Therefore, some credence must be given for these closure reports and the Court below cannot completely disregard these closure reports and take cognizance of the private complaint independently.

15.The order of the Court below taking cognizance of the private complaint does not reflect any application of mind. The materials available on record does not make any offence under Section 120 (b), 420, 423, 467, 468, 406, 471 and 506(i) of IPC. The Court below has mechanically passed an order taking cognizance of the private complaint by completely disregarding the closure reports filed by the Police. That apart, the continuance of the criminal proceedings against the petitioners is a clear abuse of process of Court and the interest of justice requires the entire proceedings to be quashed.

16.In the result, the order passed by the Court below in CrI.MP NO.2049 of 2017, dated 13.03.2018, is hereby set aside and the entire proceedings in CC No.38 of 2018, on the file of the Judicial Magistrate-III, Tuticorin, is hereby quashed. Accordingly, the Criminal Original Petitions are allowed. Consequently, connected miscellaneous petitions are closed."

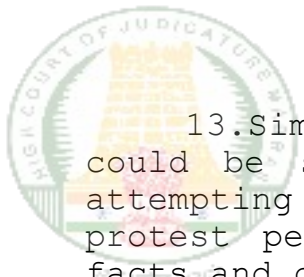
10.Mr.T.Mohan, learned counsel appearing for the respondent company would also submit that the above facts would clearly disclose as how many times, the petitioner attempted to bring the dispute between them within the criminal fold in order to harass the respondents. In fact, the learned counsel would also state that already they approached the competent civil court under Sections 9



and 11 of the Arbitration & Conciliation Act by filing petition before the City Civil Court, Hyderabad in O.P.No.832/2014. The said O.P was dismissed by the City Civil Court, Hyderabad vide its order dated 21.01.2019. As against that, an appeal was filed in COMCA No.39 of 2019 before the Hon'ble High Court of Judicature for the State of Telungana and Hyderabad. The High Court of Hyderabad has also dismissed the appeal by passing a detailed order on 22.10.2019. The learned counsel would therefore, submit that the petitioner having failed in all his attempts to succeed both before the criminal as well as civil forum, has approached this Court yet again by filing vexatious and mischievous private complaint under Section 200 of Cr.P.C. The learned counsel would emphasis the fact that the issue of TDS deduction towards payment not made was specifically dealt with at paragraph 7 of the earlier order passed by this Court and this Court took note of the fact that the allegation towards deduction of TDS was not made until a complaint was given to the Superintendent of Police, Thoothukudi on 25.08.2014. In fact, while quashing the private complaint earlier vide order dated 08.10.2018, this Court found that every time when protest petition is filed or the private complaint is filed, the petitioner herein was coming out new version of the business transaction. Therefore, considering all the circumstances of the case, the trial Court has dismissed the private complaint. In fact, the learned counsel would submit that the petitioner is also guilty of suppression of materials facts namely, that in the private complaint before the Judicial Magistrate, the quashing of the earlier private complaint by this Court on 08.10.2018 in Crl.O.P(MD)No.6798 of 2018 was not even referred to. Therefore, the petitioner's review petition has to necessary fail for various reasons as made out above and in fact, it should be dismissed with exemplary costs as the petitioner has not even disclosed in the complaint before the Judicial Magistrate about the earlier complaint being quashed by this Court.

11.I have considered the submissions of the learned counsel for the petitioner and the learned counsel for the respondent company/Directors.

12.From the above narrative, it is very clear that the petitioner has been repeatedly attempting to rope in the respondents in a criminal case and every time when he failed when the protest petition was dismissed, he has repeatedly approached the Criminal Court under one pretext or the other as he was not willing to accept the decision taken by the trial Court on the earlier occasion. The fact of the matter was that the petitioner himself has invoked the arbitration clause in the agreement entered into between the petitioner and the respondents and initiated arbitral proceedings and sought certain directions by invoking Sections 9 and 11 of the Arbitration Act. However, he was not successful either in the original proceedings or in the appeal.

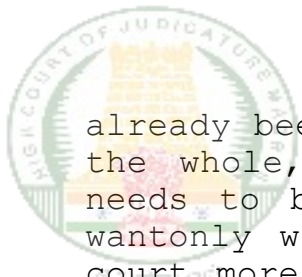


13. Simultaneously, the petitioner out of desperation as it could be seen from the facts as narrated above, has also been attempting to approach the criminal courts repeatedly and filed two protest petitions and two private complaints on the same set of facts and circumstances.

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14. From the materials which are placed for consideration before this Court, it could be seen that the deduction of TDS without making any payment was already dealt with by this Court as contended by the learned counsel for the respondents. Therefore, in the guise of setting out new facts, the petitioner has once again approached the criminal court by filing a private complaint under Section 200 Cr.P.C. In fact, when this Court has passed an order by quashing the private complaint on 08.10.2018 in Crl.O.P(MD)No.6798 of 2019, it was strongly observed by this court that it was a gross abuse of process of court by the petitioner herein. The learned Judge of this court had quashed the proceedings against the respondents herein by making scathing remarks about the repeated attempt of the petitioner to give a criminal colour to a civil dispute between the parties. The manner in which the petitioner has been approaching the criminal court periodically for the same allegations on the same set of facts and circumstances was nothing but an attempt to harass the respondents. All the attempts by the petitioner herein have rightly failed and the intention of the petitioner herein is lacks in *bona fides* and the protest petition and the private complaint filed by the petitioner against the respondents is with oblique motive with a view to arm twist the respondents in order to secure his own ends.

15. Moreover, as contended by the learned counsel for the respondents, nowhere in the private complaint filed by the petitioner which is the subject matter of the present revision petition, it was mentioned by the petitioner about the quashment of the earlier private complaint filed by him before this Court on 08.10.2018 in Crl.O.P(MD)No.6798 of 2018. Even in this revision petition, there is only a passing reference about the order passed by this Court on 08.10.2018. Therefore, the intention of the petitioner is only a desperate attempt to proceed against the respondents by foisting a false criminal case against them and get summons issued to them. Although decision was shown on behalf of the petitioner about the legal principles that there was no bar for filing the second complaint, this Court is unable to apply the said decision on the factual matrix of the present case for the simple reason that the repeated attempt by the petitioner in order to give a criminal colour to the civil dispute between the parties and is brazenly motivated and lacks *bona fide*. It is also the fact that there was absolutely no change in circumstances, and so called new set of facts which according to the petitioner which came to his knowledge only after earlier quashment of the private complaint against the petitioner was contrary to records, since this Court has



already been dealt by this Court in its order dated 08.10.2018. On the whole, this Court finds that the attitude of the petitioner needs to be strongly deprecated. He has been unscrupulously and wantonly without any materials whatsoever approaching the criminal court more than four times to rope in the respondents in criminal case when the dispute between parties is clearly civil in nature and the arbitral proceedings were also initiated by the petitioner himself.

16. In the said circumstances, this Court is of the view that the undesirable attitude of the petitioner should not go unnoticed by this Court and therefore, the revision petition is liable to be dismissed with exemplary costs.

17. When this Court has clearly held in its order dated 08.10.2018 in Crl.O.P(MD)No.6798 of 2019 that the materials available on records does not make out any offence under Sections 120(B), 420, 423, 467, 468, 406, 471 and 506(i) of IPC, there could be no further criminal proceedings to be initiated by the petitioner against the respondents. However, notwithstanding the clear conclusion reached by this Court, the petitioner has once again approached the criminal court by filing false complaint. Therefore, the learned Judicial Magistrate had rightly dismissed the case though not referred to the past conduct of the petitioner in detail.

18. In any event, this Court has taken note of the past attempts by the petitioner in order to implicate the respondents in criminal case unnecessarily.

19. For the above said reasons, this Court finds that the above revision petition is completely devoid of merits and substance and the same is an abuse of process of Court by the petitioner and hence, the revision petition stands dismissed with the cost of Rs.15,000/- [Rupees Fifteen Thousand only]. The cost shall be paid to the respondent company by the petitioner within a period of four weeks from the date of receipt of a copy of this order, failing which, it is open to the respondent company to initiate action for recovery of the amount from the petitioner in accordance with law.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Judicial Magistrate No.III, Tuticorin.

+1 CC to M/s.D. GEETHA, Advocate (SR-99808[F] dated 20/11/2019)

+1 CC to M/s.C.MAYIL VAHANA RAJENDRAN, Advocate (SR-100283[F] dated 21/11/2019)

CRL. R.C. (MD) NO.625 OF 2019

20.11.2019.

pm (CO)

TR(17.12.2019) 10P 4C