



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

CRL OP(MD) . No.10875 of 2014

and

MP(MD) . Nos.1 and 2 of 2014

B.T.Kumar @ Arasakumar

... Petitioner/Accused-1

Vs

1.The State Rep. by The Inspector of Police,
Pudukottai Town Police Station,
Pudukottai District.
(Crime No.386 of 2013)

: Respondent/Complainant

2.Chelladurai

: Respondent/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records relating to S.C.No.87 of 2014, pending on the file of the learned Assistant Sessions Judge cum Chief Judicial Magistrate, Pudukkottai and quash the same.

For Petitioner : Mr.K.Govindarajan
for Mr.S.Ravi

For Respondents : Mr.A.Robison
Government Advocate (Crl. side)
(for R1)

Mr.J.Anandkumar
Legal Aid Counsel (for R2)

ORDER

This petition has been filed seeking to quash the proceedings in S.C.No.87 of 2014, pending on the file of the learned Assistant Sessions Judge-cum-Chief Judicial Magistrate, Pudukkottai.

2.The petitioner is figuring as the first accused in S.C.No.87 of 2014, pending on the file of the learned Assistant Sessions Judge-cum-Chief Judicial Magistrate, Pudukkottai. The second respondent/Chelladurai is the de-facto complainant. The case of the second respondent is that induced by the representations held out by the accused (A1 and A2), he parted with a sum of Rs.5,80,000/-. Document No.148 of 2006 was also registered on the file of the Sub-Registrar, Pudukkottai. The de-facto complainant was inducted in the teachers' training college as a trustee. According to the



de-facto complainant, even though the accused promised decent returns on the investment, neither accounts were submitted nor any dividend paid. When the de-facto complainant met the accused on 01.03.2013, at about 04.00 p.m., at Pudukkottai Lena Thirumana Mandapam, he was criminally intimidated. Hence, the de-facto complainant lodged information to the Inspector of Police, Pudukkottai Town Police Station, Pudukkottai District. On 08.11.2013, leading to the registration of Crime No.386 of 2013, investigation was conducted and final report was filed. After committal, the case was made over to the Assistant Sessions Judge-cum-Chief Judicial Magistrate, Pudukkottai. The charges under Sections 294(b), 307 r/w 34, 420 and 406 of IPC were also framed. To quash the same, this Criminal Original Petition has been filed by the first accused.

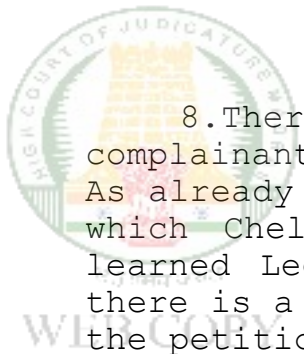
3.Though the notice was served to the de-facto complainant and he did not also enter appearance. Hence, this Court gave a direction to the Registry to appoint a Legal Aid Counsel.

4.The learned Legal Aid Counsel appearing for the second respondent as well as the learned Government Advocate (Crl. side) appearing for the first respondent submitted that there are *prima facie* materials to fasten penal liability on the petitioner. Therefore, this Court would not be justified in its exercising in order to inherent power under Section 482 of Cr.P.C. The learned counsel drew my attention to the statement recorded under Section 161 of Cr.P.C.

5.The learned counsel for the petitioner reiterated the contentions set out in the memorandum of grounds.

6.I carefully considered the rival contentions and went through the materials on record.

7.In the final report itself, there is a specific reference to document No.148 of 2006. A copy of the same is enclosed in the typed set of papers. It is a trust deed executed on 10.03.2006. The de-facto complainant has been shown as one of the trustees. The name of the trust is Sri Thiyagaraja Educational Development and Charitable Trust. The petitioner/B.T.Kumar @ Arasakumar is not shown as a trustee in the said trust. The petitioner's counsel drew my attention to the fact that one Eruvan who was also shown as a trustee in the very same trust, filed a similar complaint against the petitioner and the same was taken on file in C.C.No.125 of 2012, on the file of the learned Judicial Magistrate, Alangudi. The petitioner filed Crl.O.P.No.5864 of 2013 and the same was allowed on 06.02.2018 and the proceedings impugned therein were quashed. This Court in the said order noted that the petitioner herein was not a trustee of the trust in question.



8. There is nothing on record to indicate that the de-facto complainant/Chelladurai made any payment to the petitioner herein. As already observed, the petitioner is not a trustee in the trust in which Chelladurai is a trustee. Of course, as pointed by the learned Legal Aid counsel appearing for the de-facto complainant, there is a considerable name similarity between the trust floated by the petitioner and the one floated by A2, his brother. Therefore, I am of the view that the impugned proceedings must be conducted only on the second accused/A2. In this view of the matter, the continuation of prosecution against the petitioner/A1 would amount to an abuse of legal process. Therefore, the impugned proceedings stands quashed as far as the petitioner/A1 is concerned.

9. The learned Trial Judge is directed to conclude the trial against the remaining accused on merits and in accordance with law, within a period of five months from the date of receipt of a copy of this order.

10. With this direction, the Criminal Original Petition stands allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Ad-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Assistant Sessions Judge cum Chief Judicial Magistrate,
Pudukkottai.

2. The Inspector of Police,
Pudukottai Town Police Station,
Pudukottai District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.J.ANANDKUMAR, Advocate SR-87125.

+1 CC to M/s.S.RAVI, Advocate SR-87764.

CRL OP(MD) . No.10875 of 2014

CS(14.10.2019) 3P 6C