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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.11.2019

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cr1 OP(MD)No.19356 of 2014

and

MP(MD)No.1 of 2014

- 1.Rajeev Agarval
- 2.Saimal Kumar Totta
- 3.Swapandrav
- 4.Thirumeni Kannan
- 5.Muthukumar
- 6.Pintu Chakaraborty

... Petitioners /
Accused Nos.1 to 5 & 7

Vs.

- 1.State, rep.by
The Inspector of Police,
Manur Police Station,
Tirunelveli District.
(Cr.No.353/2013)
Complainant

...1st Respondent /

- 2.Saravanakumar

... 2nd Respondent/ Defacto
Complainant

Prayer : Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records from the lower court in C.C No.335 of 2014 on the file of the Judicial Magistrate No.V, Tirunelveli, Tirunelveli District and to quash the same.

For Petitioners : Mr.V.Kathirvelu, Senior Counsel
for Mr.K.Prabhu

For Respondents : Mr.A.Robinson,
Government Advocate (crl.side) for R1
Mr.R.Anand for R2

ORDER

The petitioners are facing trial in C.C No.335 of 2014 on the file of the Judicial Magistrate No.V, Tirunelveli, Tirunelveli District on charges of offences under Sections 406 and 420 IPC. To quash

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the same, this Original Petition has been filed.

2. Heard the learned Senior Counsel appearing for the petitioners and the learned counsel appearing for the defacto complainant and the learned Government Counsel.

3. The case of the prosecution in brief is as under :

Simran Wind Power Project Limited is a company incorporated under the provisions of the Companies Act, 1956 and owns 138 Wind Turbines installed in the State of Tamil Nadu. 16 Wind Turbines had been installed and were working in the area known as Rastha. They used to generate electricity and generated electricity used to be transmitted to Four 33 Kv feeder transformer installed at power sub-station of TNEB at Rastha. Out of 16 Wind Turbines, 5 Turbines were connected to TR-1, 5 Turbines were connected to TR-2 and 5 Turbines to TR-3. Another 45 Turbines had been installed and were working in an area known as Amuthapuram. The energy generated from those Turbines were transmitted to the 33 Kv feeder transformer installed at power sub-stations of TNEB at Amuthapuram. The transmission lines were being commonly shared by the various wind power generating companies.

(ii) Whenever maintenance works were undertaken, the wind turbines had to be shut down. This was causing losses. Therefore, Simran Wind Power Project Limited entered into an agreement with the defacto complainant for getting the transmission line reshuffled and for installing dedicated lines of their own. They entered into an agreement with Aerodynamic Adventure Services to carry out this work. M. Saravanakumar, the defacto complainant is the Proprietor of the said concern. Agreements were entered into between Simran Wind Power Project Limited and the defacto complainant on 19.02.2013. The first accused is the Director of the said company. The second and third accused are the Deputy General Manager and the General Manager. The fourth accused is the Manager. The fifth, sixth and seventh accused are working as Engineers.

(iii) It is the specific case of the defacto complainant that believing the representations held out by the accused, he commenced the contract works. The total contract value is Rs.6.00 crores. The value of the works done by the defacto complainant comes around to Rs.3,69,50,000/-. Even though the defacto complainant submitted the requisite bills and invoices, the accused have been evading payment. The accused have always had a dishonest intention to cheat the defacto complainant. They have committed criminal breach of trust also. With these allegations, the defacto complainant lodged a complaint with the Inspector of Police, Manur Police Station leading to registration of Crime No.353 of 2013. Investigation was undertaken and final report was filed before the learned Judicial



Magistrate No.V, Tirunelveli, Tirunelveli District. Cognizance of the offences under Sections 406 and 420 of IPC was taken. The case was taken on file in C.C No.335 of 2014. Summons were issued to the accused. After receiving the summons, the accused have moved this Court invoking its powers under Section 482 of Cr.Pc for quashing the impugned proceedings.

4.The learned counsel appearing for the defacto complainant submitted that the contentions raised by the petitioners/accused are factual in nature and that they will have to be necessarily established only during a regular trial and that the inherent powers of this Court are not to be invoked. The defacto complainant filed an additional typed set of papers enclosing the correspondence between the second respondent and the accused and also a host of other materials to indicate that he had substantially performed his part of the contract.

5.I carefully considered the rival contentions. The statement of the defacto complainant recorded under Section 161(3) of Cr.PC is as under :

"I am running a proprietary concern in the name and style of Aerodynamic Adventure Services. Simran Wind Power Project Limited is based in Calcutta. Its officials namely, Rajeev Agarwal, Shyamal K.Dutta, Swapan Roy, Thirumeni Kannan, Muthukumar, Krishnanval Janarthanam and Pintu Chakaraborty approached us and requested our concern to install 33 Kv feeder transmission lines. Talks were held between us on 19.02.2013 at 10.30 A.M at Rastha. The contract value was fixed at Rs.6.00 crores. The accused also agreed to pay Rs.6.00 crores and entered into a contract. I believed the words of the accused and commenced the works. As per the contract, I had done works to the tune of Rs.3.50 crores. I submitted the bills and other documents to show that we had done the works for the said value. When we asked for payment, the accused were giving evasive replies. Till date, the agreed amount has not been paid. I had sent several reminders. I met them several times in person and asked for the payment. By not settling my claim for the work done, the accused have cheated me and committed breach of trust. Since I have not received my payment, I complained to the police. I am submitting the correspondence between us, work done certificate, receipts for having purchased the materials, bank account statements, work completion report, e-mails sent by the accused to the defacto complainant."

6.By no stretch of imagination can the offence under Section 406 of IPC be said to be made out. To attract the said offence, the element of entrustment must be present. In this case, even on the very face of it, the said element is absent. The defacto

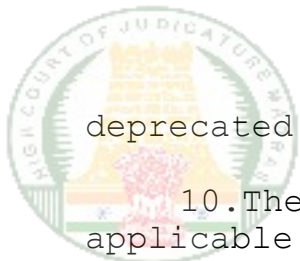


complainant entered into a commercial transaction with Simran Wind Power Project Limited. Therefore, in the very nature of things, the element of entrustment stands excluded. I, therefore, hold that the basic ingredients of Section 406 of IPC are absent in this case.

7. To attract the offence of cheating under Section 420 of IPC, it must be established that the accused had dishonest intention at the very inception. In this case, there is nothing on record to even remotely indicate that the accused had such an intention. It is not in dispute that Simran Wind Power Project Limited is having a number of wind turbines in the locality. They wanted to establish a dedicated feeder line for transmitting and wheeling energy. They therefore entered into an agreement with the defacto complainant. A mere look at the payment terms in the agreement would show that 10% of the total supply value was to be paid as advance against bank guarantee from scheduled bank. To a pointed question from the court, the learned counsel for the defacto complainant submitted such a bank guarantee was never arranged. He later came up with a defence that they had waived this part of the payment and that is why they did not arrange any bank guarantee. It is not the case of the defacto complainant that Simran Wind Power Project Limited had taken over and made use of the work done by the defacto complainant.

8. The petitioners initially contended that the defacto complainant had not done any work at all pursuant to the contract. Later, it was submitted that some minor works might have been carried out. There is a serious dispute as regards the extent of the work done and its value. But, it is beyond dispute that the accused have not derived any benefit at all. The defacto complainant might have suffered loss, but the petitioners have not made any wrongful gain. This aspect of the matter is highlighted only to show that the petitioners did not have any dishonest intention at the inception. In fact, from a reading of the statement of the defacto complainant recorded under Section 161 of Cr.PC, one can see that no such allegation is made. It is quite possible that the petitioners had committed breach of contract. But, every breach of contract cannot be converted into a criminal case.

9. The Hon'ble Supreme Court in the decision reported in **(2006) 6 SCC 736 (Indian Oil Corpn. vs. NEPC India Ltd and others)** observed that there is a growing tendency in business circles to convert purely civil disputes into criminal cases. This is because civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be



deprecated and discouraged.

10. These observations of the Hon'ble Supreme Court are squarely applicable to the facts and circumstances of the case. The question then arises as to whether the inherent powers of this Court can be invoked for quashing the impugned proceedings. It has been held time and again that criminal proceedings can be quashed where the allegations made by the prosecution even if taken at their face value and accepted in their entirety do not prima facie constitute any offence. The case on hand is one such. Even if the entire case of the defacto complainant is taken at its face value, still no offence is made out. It is only a case of breach of contract and no criminality can be attached to the conduct of the petitioners. The impugned proceedings stand quashed. This criminal original petition stands allowed. Connected miscellaneous petition is closed. It is made clear that allowing of this criminal original petition will not cast any reflection on the civil rights of the defacto complainant. The civil or arbitration proceedings between the defacto complainant and the accused company will be dealt with entirely on their own merits. The benefit of this order will enure the non-petitioning accused also.

Sd/-

Assistant Registrar(Writs)

// True Copy //

Sub Assistant Registrar(CS)

Skm

To

1.The Inspector of Police,
Manur Police Station, Tirunelveli District.

2.The Judicial Magistrate No.V, Tirunelveli,
Tirunelveli District.

Cr1 OP(MD)No.19356 of 2014

and

MP(MD)No.1 of 2014

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nsn(CO)

TR(09.12.2019) 5P 3C