



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.11.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P.(MD)Nos.11560 & 14507 of 2015 and

M.P.(MD)Nos.1,1,2 & 2 of 2015

CRL.O.P.(MD)No.11560 of 2015

1. Stalin
2. Derik Stalin ... Petitioners/Accused Nos.2 & 3
Vs.

1. The State rep. By,
The Inspector of Police,
District Crime Branch,
Kanyakumari District.
(Crime No.72 of 2013) ... 1st Respondent/Complainant

2. G.Anthony Ravichandran,
S/o.George Alphones,
M/s.Kumaran Auto Pvt. Ltd.,
No.58/1, Sumitha Bhavan,
1st Cross Street, Nesamani Nagar,
Nagercoil,Kanyakumari District.
... 2nd Respondent/
Defacto Complainant

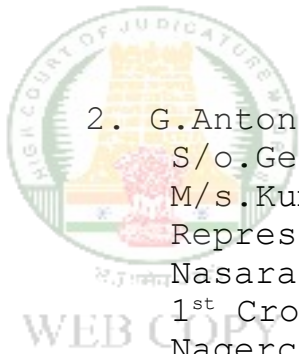
Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for the records relating to the charge sheet in C.C.No.47 of 2015 on the file of the Judicial Magistrate Court No.I, Nagercoil and quash the same as illegal.

For Petitioners	: Mr.M.Ajmal Khan,Senior Counsel, for M/s.Ajmal Associates.
For R-1	: Mr.A.Robinson, Government Advocate(Crl. Side)
For R-2	: Mr.N.Dilipkumar

CRL.O.P.(MD)No.14507 of 2015

K.Subramanian ... Petitioner/Accused No.1
Vs.

1. The State rep. By,
The Inspector of Police,
District Crime Branch,Nagercoil,
Kanyakumari District.
(Crime No.72 of 2013) ... Respondent/Complainant



2. G.Antony Ravindran,
S/o.George Alphones,
M/s.Kumaran Auto Pvt. Ltd.,
Representing as Power Agent of
Nasarath Charles,No.58/1, Sumitha Bhavan,
1st Cross Street, Nesamani Nagar,
Nagercoil,Kanyakumari District.

... Respondent/
Defacto Complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for the final report in C.C.No.47 of 2015 on the file of the learned Judicial Magistrate No.I, Nagercoil, Kanyakumari District and quash the same with regard to the petitioner.

For Petitioner	: Mr.S.Palanivelayutham
For R-1	: Mr.A.Robinson, Government Advocate(Crl. Side)
For R-2	: Mr.N.Dilipkumar

C O M M O N O R D E R

The petitioner in Crl.O.P.(MD)No.14507 of 2015, namely, K.Subramanian is figuring as the first accused in C.C.No.47 of 2015 on the file of the Judicial Magistrate No.I, Nagercoil. Stalin and Derik Stalin are figuring as accused Nos.2 and 3 in the said case. They filed these two criminal original petitions for quashing the impugned proceedings as far as they are concerned.

2. The defacto complainant in this case is one Anthony Ravichandran acting as power agent of M/s.Kumaran Automobiles Private Limited who is a passenger car dealer having their business at Nagercoil. It was started by one Kumaresan, who is the father of the first accused K.Subramaniam. The said Private Limited Company was facing financial difficulties. Therefore, accused No.1 Subramaniam requested Nazereth Charles to invest his funds in the company. An offer letter in this regard was made on 09.06.2007. Nazereth Charles invested to the tune of almost Rs.17 Crores of Rupees over a period of several months. Even though his relationship with the company commenced in the year 2007 itself, he permitted accused No.1 Subramaniam to be at the helm of affairs. Nazereth Charles took over the company in full only in the year 2013. When he became the Managing Director after he fully took over the company, he caused to issue paper publication also. The paper publication reads that with effect from 18.06.2013, Nazereth Charles had assumed full charge of



M/s.Kumaran Automobiles Private Limited.

3. The allegation of the defacto complainant is that accused Nos.2 and 3 had purchased two valuable pieces of land vide sale deeds dated 19.07.2013 from accused No.1 Subramaniam. The said lands which were purchased by accused Nos.2 and 3 is actually the place where M/s.Kumaran Automobiles Private Limited was running their stockyard. It is further alleged that accused No.1 Subramaniam misappropriated the funds of the company without the knowledge of Charles Nazereth. With these allegations, a complaint was filed before the District Crime Branch, Nagercoil, leading to registration of Crime No.72 of 2013. The matter was taken up for investigation and final report came to be filed before the Judicial Magistrate No.I, Nagercoil. Cognizance of the offences under Sections 406, 409 and 420 of I.P.C. was taken and the case itself was taken on file in C.C.No.47 of 2015. To quash the same, this criminal original petitions have been filed.

4. Heard the learned counsel appearing for accused No.1 Subramaniam, the learned senior counsel appearing for accused Nos.2 and 3 and the learned Government Advocate appearing for the first respondent and the learned counsel appearing for the defacto complainant.

5. The learned senior counsel appearing for accused Nos.2 and 3 and the learned counsel appearing for accused No.1 reiterated their contentions set out in the memorandum of grounds and wanted this Court to quash the impugned proceedings.

6. Per contra the learned counsel appearing for the defacto complainant submitted that the contentions canvassed by the petitioners are rather factual in nature and that they will have to be established only in a regular trial before the Court below and that no case has been made out for invoking the inherent powers of this Court.

7. The learned counsel appearing for the defacto complainant filed a typed set of papers which contains an offer letter dated 09.06.2007. The said offer letter contains the terms offered by accused No.1 to the defacto complainant. He also pointed out that the land in question was purchased on 17.09.2007. He highlighted the fact that the land was purchased by K.Subramaniam, S/o.Kumaresan, Managing Director, M/s.Kumaran Auto Private Ltd. He also pointed out that the purchase of lands was subsequent to the entry of Nazereth Charles in the scene. He also submitted that from the company account, there are materials to show that the entire transaction was funded only by the company.

8. Even though the contentions of the learned counsel



appearing for the defacto complainant are rather strong and formidable, the facts remains that the land ultimately came to be purchased only in the name of K.Subramanian accused No.1. Of course he has been described in the sale deed as the Managing Director of the company in question. But the fact remains that the sale deed was executed in the name of an individual. Likewise, in the revenue records only the name of K.Subramanian was figuring. Therefore, as rightly pointed out by the learned senior counsel appearing for accused Nos.2 and 3, purchase made directly from accused No.1 cannot be said to constitute an offence. If the land had stood in the name of the company, then probably the defacto complainant may have a case.

9. There is a dispute regarding who is actually in possession of the said land. While the defacto complainant would claim that they are running their company in the said land, the learned senior counsel appearing for accused Nos.2 and 3 pointed out that the suit for injunction filed by the defacto complainant was rejected by the trial Court and that it is pending in appeal. The learned counsel appearing for the defacto complainant would state that the appellate Court had granted interim order of status quo. Since the issue regarding possession is now pending adjudication by the competent civil Court, I am of the view that it would not be appropriate to venture beyond this. The final report filed against accused Nos.2 and 3 states that they have committed the offences under Sections 406 and 420 of I.P.C. The offence under Section 406 of I.P.C. can be said to be attracted only if there is an element of entrustment. In this case, there is no entrustment to accused Nos.2 and 3. Likewise the offence under Section 420 of I.P.C. will be made out only if it may be shown that some representation or assurance was held out by these accused to the defacto complainant as a result of which, he suffered some wrongful loss. In this case, accused Nos.2 and 3 did not hold out any assurance or representation to the defacto complainant. Therefore, the elementary ingredients of Sections 406 and 420 of I.P.C. are wholly absent in this case. Continuance of the impugned prosecution against accused Nos.2 and 3 can be only amount to an abuse of legal process.

10. In this view of the matter, the impugned proceedings as far as accused Nos.2 and 3 are concerned in Crl.O.P.(MD)No.11560 of 2015 stand quashed. Crl.O.P.(MD)No.11560 of 2015 stands allowed.

11. The case of the accused No.1 stands on a completely different footing. The learned counsel appearing for the accused No.1 seeks leave to withdraw the criminal original petition.

12. Crl.O.P.(MD)No.14507 of 2015 stands dismissed as



withdrawn. However, the personal appearance of the petitioner/accused No.1 before the Court below is dispensed with.

13. I am making it clear that accused No.2 and 3 will not be entitled to take advantage of this order in their contest with the defacto complainant in the civil proceedings. The same will be decided entirely on merits and in accordance with law.

14. The defacto complainant's counsel wants this Court to issue a direction for speedy disposal of this case. Since the case of the year itself is more than six years old, the learned trial Magistrate is directed to conclude the case on merits and in accordance with law within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (RECORDS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

PMU

To:

1. The Judicial Magistrate Court No.I,
Nagercoil, Kanyakumari District.

2. The Inspector of Police,
District Crime Branch, Nagercoil,
Kanyakumari District.

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

+2 CC to Mr.N.DILIP KUMAR, Advocate (SR-102499,102500[F] dated 29/11/2019)

+1 CC to Mr.S.PALANIVELAYUTHAM, Advocate (SR-102871[F] dated 02/12/2019)

+1 cc to M/s.AJMAL ASSOCIATES , Advocate SR.No.102469

Crl.O.P.(MD)Nos.11560 and 14507 of 2015

28.11.2019

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