



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.12.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

Crl.O.P. (MD) .No.14087 of 2015

and

Crl.M.P. (MD) .Nos.1 and 2 of 2015

D.Ramkumar ...Petitioner / Sole Accused
Vs.

1.State represented by
the Inspector of Police,
Pasupathi Payalam Police Station,
Karur. ...Respondent / Complainant

2.K.Paneer Selvam ...Respondent / De facto Complainant

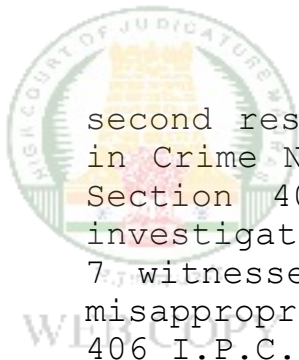
PRAYER: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to quash the impugned criminal proceedings in C.C.No.190 of 2015, on the file of the learned Judicial Magistrate, Karur.

For Petitioner	: Mrs.Thilaga Balasubramanian for M.s.I.Velpradeep
For R-1	: Mr.M.Chandrasekaran` Additional Public Prosecutor
For R-2	: Mr.S.Gokulraj

ORDER

This Criminal Original Petition has been filed to quash the impugned criminal proceedings in C.C.No.190 of 2015, on the file of the learned Judicial Magistrate, Karur.

2. The petitioner is the accused in C.C.No.190 of 2015, which is pending trial for the offence under Section 406 I.P.C. The case of the prosecution is that the petitioner is a Material Contractor of Chettinadu Cements, Puliur, Karur District. The petitioner has supplied the raw materials to the Chettinadu Cements. In connection with the same, he had some business relationship with the second respondent, who was running a S.M.A.T. Transport. The second respondent had transported the materials through his lorry to the Cement Factory. But payments were not paid to the second respondent for the period from 04.05.2014 to 22.09.2014. In this regard, the petitioner / sole accused has to pay Rs.13,47,000/- to the second respondent. The



second respondent had lodged a complaint on 16.11.2014 and a case in Crime No.814 of 2014 has been registered for the offence under Section 406 I.P.C. and the first respondent on completion of investigation, had filed a charge sheet before the trial Court and 7 witnesses have been cited. Hence, he has committed criminal misappropriation and he was punished for the offence under Section 406 I.P.C.

3. The contention of the petitioner is that taking into account the un-controverted statement on the witnesses side, no ingredients for the offence under Section 406 I.P.C. has been made. Further, in this case, the second respondent had not entrusted any property to the petitioner. Thereby, no question of petitioner had misappropriated or converted to its own use. In the case of misappropriation, entrustment is *sine qua non*. In the absence of any entrustment, there cannot be any misappropriation. At the most, it can only be dues of transport charges, for which, the offence under Section 406 I.P.C would not be attracted and for the offence under Section 420 I.P.C., it is admitted case of the second respondent that are transport contractor for the petitioner and have business transaction and they had been carrying on business prior to 04.05.2014. In such a case, cheating of inception does not arise and the definition of cheating would not attract. Further it is also submitted that during the pendency of the above case, the payments have been made through Banks, which are acknowledged by the respondent, a civil is given a criminal colour. The first respondent without conducting any proper investigation had falsely filed charge sheet in this case.

4. The learned counsel appearing for the second respondent / de facto complainant submits that in this case seven witnesses have been examined, L.W.1, is the de facto complainant. L.W.2, is the Manager, who was working in the petitioner's company, produced the relevant vouchers and documents to prove that the petitioner had been availing services of the de facto complainant's lorry in transportation of the materials and there are due to a sum of Rs.13,47,000/- for the period from 04.05.2014 to 22.09.2014. L.W.3 and L.W.4 are the drivers of the de facto complainant's Transport Company, who transported the goods and L.W.5 is the Manager of the Chettinad Cement Company, who acknowledged receipt of materials through the de facto complainant's lorry. L.W.6, the Sub Inspector of Police, who registered First Information Report. L.W.7, the Inspector, who conducted the investigation and filed the charge sheet. The grounds raised by the petitioner are to be raised only during the trial and not to be raised in this quash petition.

5. The learned Additional Public Prosecutor appearing for the first respondent submitted that on receipt of a complaint from



the second respondent, a case in Crime No.814 of 2014 was registered for the offence under Section 406 I.P.C. and thereafter, the *de facto* complainant, the owner of the lorry, drivers of the lorry and manager of the Cement factory had been examined, who have all confirmed about the petitioner availing services of lorry in transportation of materials and huge sum of money have been kept as due. The Manager had clearly stated about the due rental charges paid for the relevant period and the petitioner having received the rental charges ought to have made the payments to the Transport Company had misappropriated the same. Hence, a case came to be registered and after a thorough investigation, charge sheet has been filed.

6. Considering the rival submissions and the materials available on record, it is admitted that business transaction between the petitioner and second respondent was there. It is also admitted that after the prior period of offence as mentioned, the petitioner and the second respondent have been continuing their business and payments have been made. The petitioner had also produced the copy of the bank Challans showing that regular payments have been made during the relevant period. They have also produced materials from P.P.A. Agency, from whom the raw materials were purchased. In view of petitioner and second respondent having running business transaction, it is only a business dispute and there is no entrustment from the second respondent to the petitioner. In the absence of any entrustment, there is no misappropriation, further, on the admitted fact that both petitioner and second respondent having running business transaction during the relevant period, there is no question of cheating.

7. In view of the above discussion, the proceedings initiated against the petitioner in C.C.No.190 of 2015, on the file of the learned Judicial Magistrate, Karur, is set aside and this Criminal Original Petition stands allowed accordingly. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (w)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)



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To

1. The Judicial Magistrate, Karur.

2. The Inspector of Police,
Pasupathi Payalam Police Station,
Karur.

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

+1 CC to Mr.S.GOKULRAJ, Advocate (SR-105224[F] dated 16/12/2019)

+1 CC to Mr.I.VELPRADEEP, Advocate (SR-105527[F] dated 18/12/2019)

Crl.O.P. (MD) .No.14087 of 2015
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