



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.11.2019

CORAM:

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

Crl.O.P(MD). Nos.15283, 14727, 14726, 14796 and 15266 of 2015
and

M.P. (MD)Nos.1,1,1,1 and 1 of 2015

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Crl.O.P(MD).No.15283 of 2015

Soumya Banerjee

... Petitioner/2nd Accused

Vs

1.State Represented by
The Inspector of Police,
District Crime Branch,
Madurai.

2.Shankaralinga Pandian

... Respondents/Complainants

Prayer:Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records of Crime No.44 of 2015, pending on the file of the first respondent and quash the same with regard to the petitioner.

For Petitioner

: No Appearance

For R-1

: Mr.A.Robinson

Government Advocate (Crl. side)

For R-2

: Mr.T.Lajapathi Roy

Crl.O.P(MD).No.14727 of 2015

1.Keshav Misra

2.V.K.Vijayraghavan

... Petitioners/Accused Nos.1 and 4

Vs

1.State Represented by
The Inspector of Police,
District Crime Branch,
Madurai District.

Crime No.44 of 2015.

... 1st Respondent / Complainant

2.S.K.Sankaralinga Pandian

... 2nd Respondent / Defacto Complainant

Prayer:Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the case diary and quash the First Information Report as against the petitioners in Crime No.44 of 2015, on the file of the first respondent.

For Petitioners

: Mr.R.John Sathyan

For R-1

: Mr.A.Robinson

Government Advocate (Crl. side)

For R-2

: Mr.T.Lajapathi Roy



Crl.O.P(MD).No.14726 of 2015
Balaji Srinivas

... Petitioner / Accused No.3

Vs

1.State Represented by
The Inspector of Police,
District Crime Branch,
Madurai District.
Crime No.44 of 2015.

... 1st Respondent / Complainant

2.S.K.Sankaralinga Pandian

... 2nd Respondent/Defacto Complainant

Prayer:Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the case diary and quash the First Information Report as against the petitioner in Crime No.44 of 2015, on the file of the first respondent.

For Petitioners	: Mr.R.John Sathyan
For R-1	: Mr.A.Robinson
	Government Advocate (Crl. side)
For R-2	: Mr.T.Lajapathi Roy

Crl.O.P(MD).No.14796 of 2015
Suresh

... Petitioner / Accused No.5

Vs

1.State Represented by
The Inspector of Police,
District Crime Branch,
Madurai District.
Crime No.44 of 2015.

... 1st Respondent / Complainant

2.S.K.Sankaralinga Pandian ... 2nd Respondent/Defacto Complainant

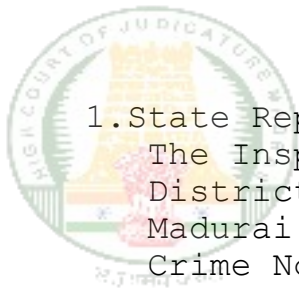
Prayer:Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records in Crime No.44 of 2015, on the file of the Inspector of Police, District Crime Branch, Madurai/first respondent herein, quash the proceedings in so far as the petitioner is concerned.

For Petitioner	: Mr.C.R.Malarvannan
For R-1	: Mr.A.Robinson
	Government Advocate (Crl. side)
For R-2	: Mr.T.Lajapathi Roy

Crl.O.P(MD).No.15266 of 2015
D.Rajasekaran

... Petitioner / Accused No.7

Vs



1.State Represented by
The Inspector of Police,
District Crime Branch,
Madurai District.
Crime No.44 of 2015.

... 1st Respondent / Complainant

2.S.K.Sankaralinga Pandian

... 2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records and quash the First Information Report in Crime No.44 of 2015, on the file of the first respondent in respect of the petitioner.

For Petitioner	: No Appearance
For R-1	: Mr.A.Robinson
	Government Advocate (Crl. side)
For R-2	: Mr.T.Lajapathi Roy
	COMMON ORDER

The persons shown as accused in Crime No.44 of 2015, on the file of the Inspector of Police, District Crime Branch, Madurai, have filed these petitions for quashing the said First Information Report.

2.The de-facto complainant in this case is one Sankaralinga Pandian, who is shown as the second respondent herein. His specific case is that a company in the name and style of M/s.Auro Mira Bio-Energy Madurai Private Limited was established at T.Kallupatti, Near Madurai City. One John Makesh and Rajasekar, who were in-charge of procurement approached the de-facto complainant and requested him to arrange supply of firewood. They had also assured him that the bills will be honoured and the amounts will be paid without any default. Believing the said words, the de-facto complainant had been supplying firewood from 01.02.2014 till 02.04.2014 for about 61 days. Thereafter, the company had closed down. The de-facto complainant had supplied materials to the tune of Rs.36,92,796/-. But then, they were paid only to the tune of Rs.22,07,325/-. According to him without settling the balance amount of Rs.14,85,471/-, the accused had left the scene. According to him, the accused herein were jointly in-charge and management of the company in question and that they will have to necessarily answer and that they are liable to liquidate the liability in question.

3.The complaint lodged by Sankaralinga Pandian before the District Crime Branch, was registered as Crime No.44 of 2015 for the offences under Sections 120(B), 406, 420, 294(b) and 506(i) of IPC. Before investigation could be taken up, these petitions came to be filed for quashing the said First Information Report.



4. Heard the learned counsel appearing for the petitioners, the learned Government Advocate (Crl. side) appearing for the first respondent and the learned counsel appearing for the de-facto complainant.

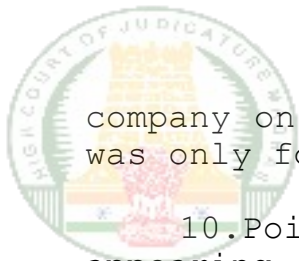
5. A mere reading of the averments in the First Information Report would clearly indicate that the assurances were held out only by John Makesh and Rajasekar (A-6 and A-7). Only these two accused had dealings with the de-facto complainant. The other five accused were placed elsewhere and there was no interaction between them and the de-facto complainant at any point of time. Even according to the de-facto complainant only after the settling down all the establishment, he went to Chennai and met with Vijayaraghavan (A-4) who is said to have informed the de-facto complainant that his dues will be cleared.

6. Section 420 of IPC can be pressed into service only if it is shown that there was dishonest intention at the very inception. In these cases, even according to the de-facto complainant, out of Rs.36,00,000/- about Rs.22,00,000/- was paid. As rightly contended by the learned counsel appearing for the petitioners, payment of a substantial sum of Rs.22,00,000/- is sufficient to indicate that there was no dishonest intention on the part of the accused.

7. The offence under Section 406 of IPC also is clearly not made out. The said offence can be said to be attracted only if there is an element of entrustment. This is a commercial transaction. The case of the de-facto complainant is that for the articles supplied, the bills were not settled. Therefore, there is no element of entrustment in these cases. Hence, the offence under Section 406 of IPC is also not made out.

8. I can clearly notice that the offences under Sections 294(b) and 506(i) of IPC have been introduced only for the purpose of enabling the Investigating Officer to register the case on hand.

9. But then, it is also submitted by the learned counsel for the petitioners that the said company had already been wound up and that the liquidation proceedings are presently on. IDBI is said to have taken over the assets of the company. Of course as per the water fall mechanism, the secured creditors will divide the assets on pro-rata basis. Only if there is something left, the unsecured creditors can step in. It appears that the total liability of the company is more than 40 crores, while the value of the assets is less than half of it. Therefore, the unsecured creditor/de-facto complainant will not clearly get their dues. I cannot ignore one contention urged by the learned counsel appearing for the de-facto complainant. The company had closed shop in the first week of April 2014 itself. The de-facto complainant had been making his supply on 17.02.2014. The transaction between the



company on the one hand and the de-facto complainant and the others was only for a period of 61 days.

10. Pointing out that the contention of the learned counsel appearing for the de-facto complainant is that when the men in-charge of the affairs knew fully well that the company was going to close down, they ought not to have procured supplies from the de-facto complainant. Thus from this, the dishonest intention of the accused can be inferred.

11. But then, even according to the First Information Report it is only A-6 and A-7 that is John Makesh and Rajasekar who had dealt with the de-facto complainant herein. Therefore, even while quashing the impugned First Information Report as far as A-1 to A-5 are concerned, I am of the view that the First Information Report cannot be quashed as far as A-6 and A-7 are concerned.

12. Accordingly, Crl.O.P.(MD)No.15266 of 2015 stands dismissed and Crl.O.P.(MD)Nos.15283, 14727, 14726 and 14796 of 2015 are allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Crl.side)

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Sub Assistant Registrar(CS)

sjj

To

The Inspector of Police,
District Crime Branch,
Madurai.

COPY TO:

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

+2 CC to M/s.R. JOHN SATHYAN, Advocate (SR-100069[F]& 100621
+1 CC to M/s.T. LAJAPATHY ROY, Advocate (SR-100153[F]
+1CC TO M/S.C.R.MALARVANNAN, Advocate, Sr.No.100141

Crl.O.P(MD) . Nos.15283, 14727, 14726,
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