



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.12.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRL OP (MD) . No.22928 of 2015

and

M.P. (MD)No.1 of 2015

1.C.Sivanthi
2.N.Chithambara Marthandam ... Petitioners / Accused Nos.1 & 2

-Vs-

1.The State Represented by
The Inspector of Police,
District Crime Branch (DCB),
Tirunelveli District.
(in Crime No.25 of 2014) ... 1st Respondent / Complainant

2.L.V.Jeyakumar ... 2nd Respondent / Defacto Complainant

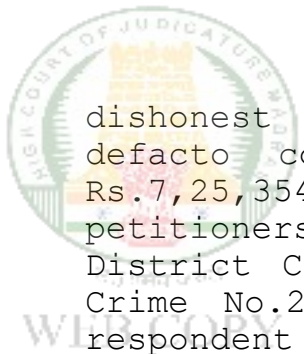
Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records pertaining to charge sheet in C.C.No.136 of 2015, pending before the Judicial Magistrate Court No.I, Tirunelveli District in Crime No.25 of 2014, dated 17.11.2014, on the file of the Respondent No.1 and quash the same as illegal.

For Petitioners	: Mr.T.Lajapathi Roy
For Respondents	: Mr.A.Robinson
	Govt. Advocate (Crl. Side) for R1
	: Mr.G.Thiruvavutselvan for R2

O R D E R

The petitioners are facing trial in C.C.No.136 of 2015, on the file of the learned Judicial Magistrate No.I, Tirunelveli. The second respondent herein is the defacto complainant.

2.The case of the defacto complainant is that the petitioners herein were given contract by the Government to build houses for Tsunami affected persons. The petitioners herein had sub contracted the works to the second respondent. The case of the second respondent is that such a sub contracting was not contemplated in the original agreement between the Government and the petitioners herein and that this shows that the petitioners had



dishonest intention from the very inception. According to the defacto complainant, the petitioners owed to pay a sum of Rs.7,25,354/-. Since the said liability was not cleared by the petitioners herein, he came forward to lodge a complaint before the District Crime Branch, Tirunelveli. That led to registration of Crime No.25 of 2014. The matter was investigated. The first respondent filed final report against the petitioners herein for the offences under Sections 406, 420 and 120(B) of I.P.C. Cognizance of the offences was taken by the learned Judicial Magistrate No.I, Tirunelveli and the case was taken on file in C.C.No.136 of 2015. To quash the same, this criminal original petition came to be filed.

3.Heard the learned counsel on either side.

4.The learned counsel appearing for the defacto complainant strongly emphasised that the very act of sub contracting done by the petitioners herein was contrary to the terms of the agreement between the petitioners and the Government.

5.I posed a specific a question to the learned counsel appearing for the defacto complainant that as to what was the total contract value between the petitioners and the defacto complainant. He stated that the total contract value was Rs.83,15,200/-. He would admit that the petitioners have sofar paid about a sum Rs.59,84,803/-. Even according to him only a balance amount of Rs.7,25,000/- remains to be paid. A mere perusal of the materials on record would really show that this is purely a commercial transaction. If there is any breach of contract, the remedy open to the second respondent is to file a civil suit for recovery. If there is any arbitration clause in their agreement, the same should have been invoked. Filing of criminal case is not at all warranted.

6.This is because none of the elementary ingredients of the offences in question are present in this case. Section 406 of I.P.C. will be attracted only if there is an element of entrustment, in this case nothing was entrusted to the petitioners herein. Therefore, the question of breach of trust will not arise. Likewise, the offence of cheating is also not made out. There was a contract between the petitioners on the one hand and the defacto complainant on the other. The second respondent did carryout his contract works. The petitioners had also made substantial payments. There is a dispute between the parties that some more amount has to be paid. Non payment of the balance amount cannot give raise to any criminal action. As already pointed out, such non-payment can only be breach of contract. Therefore, the very institution of the impugned proceeding is an abuse of process. The impugned proceeding stands quashed and the criminal original petition stands allowed.

7.What was quashed is only the criminal action instituted by the defacto complainant. If the defact complainant has any other



remedy available to him in law, it is always open to him to invoke the same. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS)

To:

- 1.The Judicial Magistrate No.I,
Tirunelveli District
- 2.The Inspector of Police,
District Crime Branch (DCB),
Triunelveli District.

Copy to:

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

+1 CC to M/s.G.THIRUVARUTSELVAN, Advocate (SR-103622[F] dated 05/12/2019)

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-103699[F] dated 05/12/2019)

Cr1.O.P. (MD)No.22928 of 2015
04.12.2019

SDS (03.06.2020) 3P-6C