



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.09.2019

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl OP(MD)No.3651 of 2015

and

MP(MD)No.1 of 2015 & Crl MP(MD)No.1902 of 2018

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1.Jeyabalan
2.Ramprasad

... Petitioners/Accused 1&3

Vs.

1.State, rep.by the Inspector of Police,
City Crime Branch,
Tirunelveli District.
(Crime No.29 of 2014)

... 1st Respondent /Complainant

2.Dr.Sumathi
3.Dr.Venkatesh Babu

... 2nd and 3rd Respondents /
Defacto complainants

Prayer : Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records relating to Cr.No.29 of 2014 pending on the file of the first respondent police and quash the same with regard to the petitioner.

For Petitioners	: Mr.K.Govindarajan for Mr.S.Ravi
For Respondents	: Mr.A.Robinson, Government Advocate (crl.side) for R1 Mr.R.Anand for R2 & R3

ORDER

Crime No.29 of 2014 was registered on the file of the Inspector of Police, City Crime Branch, Tirunelveli District at the instance of one Sumathi against the petitioners herein for the offences under Sections 417, 420 and 506(i) IPC.

2.The case of the defacto complainant is that she and her husband had entrusted the petitioners herein with the contract of constructing a hospital for them. They had paid a sum of Rs.2.40 crores to the petitioners herein over a period commencing from November 2010 till March 2014. They realized that the construction work was not carried out properly and that the moneys paid by them out of good faith was siphoned of by the accused. That led to the registration of the impugned FIR. To quash the said FIR, this O.P has been filed.



3. Heard the learned counsel appearing for the petitioners and the learned Government Advocate (crl.side) for the respondent as well as the learned counsel appearing for the second and third respondents.

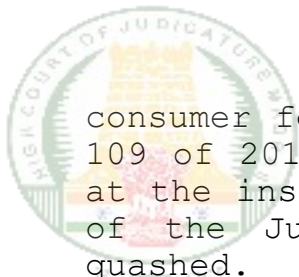
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4. The learned counsel appearing for the petitioners would draw my attention to the decision of the Hon'ble Supreme court reported in **(2000) 4 SCC 168 (Hridaya Ranjan Prasad Verma vs. State of Bihar)** and **(2009) 7 SCC 712 (Harmanpreet Singh Ahluwalia vs. State of Punjab)**. The Hon'ble Supreme Court in the aforesaid decisions held that in order to establish the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the very inception. Even according to the defacto complainant, the payments were made right from November 2010. Only in the year 2014, the FIR in question came to be registered. From this, one can understand that there was substantial commercial transaction between the parties over a period of almost four years. It is quite possible that the defacto complainant was not satisfied with the manner in which the construction works were carried out. But then, that will not enable the defacto complainant to lodge a criminal case against the petitioners herein.

5. I am also not in agreement with the submissions of the learned counsel for the defacto complainant that there is an element of entrustment involved. Payment of certain sum of money under a commercial contract cannot constitute commercial entrustment. Since the elementary ingredients of the offence are not made out in this case, I have no hesitation to quash the impugned FIR. Accordingly, the impugned FIR in Crime No.29 of 2014 on the file of the Inspector of Police, City Crime Branch, Tirunelveli stands quashed.

6. Even at the very outset before commencement of the arguments, the learned counsel for the petitioners submitted that if the complainant and her husband file a complaint before the Consumer Forum/Commission for deficiency in service, the petitioners will file a memo endorsing their "no objection" for condoning the delay in filing the case and trying the same on merits and in accordance with law.

7. This undertaking given by the petitioners through their counsel is placed on record. It is also seen that as a fall out, other criminal cases have also been lodged by both the parties. Apart from the case on hand, Crime Nos.50 & 109 of 2015 on the file of the Palayamkottai Police Station, Tirunelveli District and on the file of the lodged by the defacto complainant is pending. Likewise, Crime Nos.50 of 2015 and 109 of 2015 on the file of the Palayamkottai are pending against the defacto complainant and her husband. They appear to have been lodged at the instance of the petitioners herein. Since the parties are directed to go before the



consumer forum for pursuing their relief, Crime Nos.50 of 2015 and 109 of 2015 on the file of the Palayamkottai which were registered at the instance of the petitioners and CC/1500221/2016 on the file of the Judicial Magistrate Court, No.I, Tirunelveli also stand quashed.

8.It is made clear that the observations made in this order will not have any bearing on the pending civil proceedings instituted by the petitioners herein or in the proposed complaint to be filed by the defacto complainant before the consumer forum. They will have to be dealt with entirely on their own merits. Accordingly, this criminal original petition stands disposed of on the above terms. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2020

Sub Assistant Registrar(CS)

Skm

To

1. The Inspector of Police,
City Crime Branch, Tirunelveli District.
 2. The Inspector of Police,
Palayamkottai Police Station, Tirunelveli.
 3. The Judicial Magistrate No.I,
Tirunelveli.
 4. The Chief Judicial Magistrate,
Tirunelveli
 5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- +1 CC to Mr.S.RAVI, Advocate (SR-89728[F] dated 26/09/2019)

CrI OP(MD)No.3651 of 2015
and MP(MD)No.1 of 2015 &
CrI MP(MD)No.1902 of 2018
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MK (12.02.2020) 3P 7C

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