



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.11.2019

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cr1 OP(MD)No.8321 of 2015

and

Cr1 MP(MD)No.4685 of 2017

S.Seetharaman

... Petitioner/Accused No.1

**Vs.**

1.State, rep.by  
The Inspector of Police,  
C2, Police Station,  
Subramaniyapuram,  
Madurai.  
(Crime No.668 of 2015)

...1<sup>st</sup> Respondent/  
Complainant

(amended as per the order of this  
court dated 09.07.2015 in  
MP(MD)No.2 of 2015 in Cr1 OP(MD)No.  
8321 of 2015)

2.K.Manickam

... 2<sup>nd</sup> Respondent/ Defacto  
Complainant

**Prayer :** Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records relating to the proceedings in Crime No.668 of 2015 on the file of the first respondent police and quash the same.

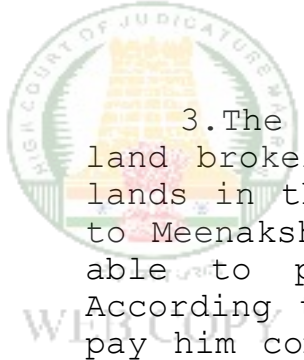
For Petitioners : Mr.G.Mariyappan for Mr.S.Parthasarathy

For Respondents : Mr.A.Robinson,  
Government Advocate (crl.side) for R1  
Mr.S.Satheeshkumar for R2

**ORDER**

The petitioner herein is shown as an accused in Crime No.668 of 2015 on the file of the C2, Subramaniyapuram Police Station for the offences under Sections 406, 420 and 294(b) and 506(i) IPC. To quash the said proceedings, this Criminal Original Petition has been filed. The defacto complainant is one K.Manickam, the second respondent herein.

2.Heard the learned counsel appearing for the petitioner, the learned counsel appearing for the defacto complainant and the learned Government Counsel for the first respondent.



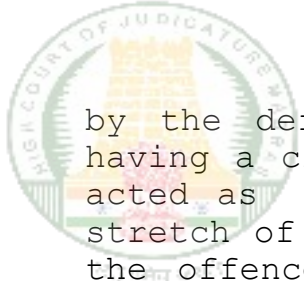
3.The case of the defacto complainant is that he acted as a land broker for the petitioner herein to procure certain valuable lands in the Madurai City. According to him, the lands belonging to Meenakshi Mills Limited came up for sale and the petitioner was able to purchase those lands and develop a gated community. According to the defacto complainant, the petitioner had agreed to pay him commission at a certain rate and that he went back on his words. Therefore, according to the defacto complainant, the petitioner herein had committed breach of trust and also cheating.

4.The learned counsel appearing for the defacto complainant stated that when an FIR has been registered at the instance of the defacto complainant, this Court should allow the investigation to progress and reach its logical conclusion. He submitted that the contentions urged by the petitioner's counsel are factual in nature and that therefore, the inherent powers of this Court are not to be invoked for quashing the impugned FIR.

5.I carefully considered the rival contentions. From the materials on record, it is seen that on the very same cause of action, the petitioner herein had earlier filed an FIR in Crime No.67 of 2010 on the file of the Central Crime Branch, Madurai City. It is beyond dispute that the final report was filed in the said case dropping further investigation. Thereafter, the defacto complainant herein filed a private complaint under Section 200 of Cr.PC before the Judicial Magistrate No.1, Madurai in Cr.M.P No.1945 of 2012. The learned Trial Magistrate after hearing the defacto complainant, came to the conclusion that the case projected by the defacto complainant is truly civil in nature. The learned Magistrate specifically gave a finding that there is no prima facie case for initiating any criminal prosecution against the petitioner herein. With these findings and observations, the private complaint filed by the second respondent herein was dismissed under Section 203 of Cr.PC vide order dated 12.06.2012. Thereafter, the impugned FIR has been registered at the instance of the defacto complainant.

6.As rightly pointed out by the learned counsel appearing for the petitioner, when once the private complaint instituted by the defacto complainant had suffered a dismissal under Section 203 of Cr.Pc, there cannot be any subsequent registration of a police case on the same set of facts. He would also emphasise the fact that earlier the police case at the instance of the defacto complainant was closed as "action dropped". Thus, the defacto complainant had resorted to both the remedies ie., filing a police case and filing a private complaint.

7.Therefore, I sustain the contention of the learned counsel for the petitioner that the very registration of the impugned FIR is an abuse of legal process. That apart, the cause of action projected by the defacto complainant dates back to the year 2002. AS rightly observed by the learned Judicial Magistrate in his order dated 12.06.2012 in Cr.MP No.1945 of 2012, the grievance projected



by the defacto complainant is predominantly civil in nature and having a civil profile. The second respondent's claim is that he acted as a broker and that he was not paid fully. This by no stretch of imagination can constitute an offence under law. One of the offences registered in the impugned FIR is under Section 406 IPC. The said offence can be attracted only if there is an element of entrustment. In this case, there is absolutely no element of entrustment.

8. For all these reasons, I hold that the impugned FIR deserves to be quashed. It is accordingly quashed. This criminal original petition stands allowed. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Cr1.Side)

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/ /2020

Sub Assistant Registrar(CS)

Skm

To

1. The Judicial Magistrate No.I, Madurai.

2. The Inspector of Police,  
C2, Police Station, Subramaniyapuram,  
Madurai.

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

+1 CC to M/s.G.MARIAPPAN, Advocate ( SR-100691[F] dated 22/11/2019 )

**Cr1 OP(MD)No.8321 of 2015**  
**and**

**Cr1 MP(MD)No.4685 of 2017**  
**21.11.2019**

**AP(04/06/2020) 3P 5C**