

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
01.03.2019	18.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. (MD) Nos.8366 & 8367 of 2013andM.P. (MD) Nos.1 & 2 of 2013 in both Crl.O.Ps.

S.Balaji ... Petitioner / 1st Respondent
in Crl.O.P. (MD) No.8366 of 2013

R.Vijaya Baskaran ... Petitioner / 2nd Respondent
in Crl.O.P. (MD) No.8367 of 2013
vs.

S.P.Muthuraman ... Respondent / *De facto* Complainant
in both Crl.O.Ps.

PRAYER (in Crl.O.P. (MD) No.8366 of 2013): Petition is filed under Section 482 Cr.P.C., to call for the records concerned complaint in CRMP 1337 of 2013 on the file of the Learned Judicial Magistrate No.1, Virudhunagar and Quash the entire proceedings as against the Petitioner.

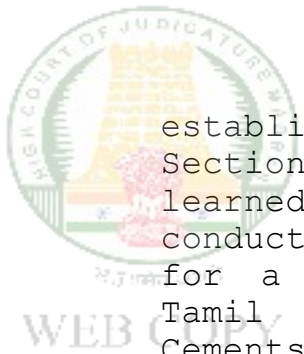
PRAYER (in Crl.O.P. (MD) No.8367 of 2013): Petition is filed under Section 482 Cr.P.C., to call for the records concerned complaint in CRMP 1337 of 2013 on the file of the Learned Judicial Magistrate No.1, Virudhunagar and Quash the entire proceedings as against the Petitioner.

For Petitioner : Mr.K.Balasubramani
(in Crl.O.P. (MD) No.8366 of 2013)
For Petitioner : Ms.AL.Ganthimathi
(in Crl.O.P. (MD) No.8367 of 2013)
For Respondent : Mr.T.Mohan
(in both Crl.O.Ps.) for M/s.R.Meenakumari

COMMON ORDER

The factual matrix of the case is as follows:

(i) M/s.Madras Cements Limited commenced construction work for establishing 25 MW Thermal Plant in Virudhunagar District in 2011. S.P.Muthuraman filed a private complaint, before the learned Judicial Magistrate No.I, Virudhunagar, in C.C.No.48 of 2012 against M/s.Madras Cements Limited alleging that they have not obtained the environmental clearance certificate and consent to



establish certificate, for which they are punishable under Section 15(1) of the Environment (Protection) Act. The learned Judicial Magistrate took the complaint on file and conducted an enquiry under Section 202 Cr.P.C., by calling for a report from the District Environmental Engineer, Tamil Nadu Pollution Control Board, whether M/s.Madras Cements Limited had obtained the necessary clearance certificates.

(ii) Balaji, Member Secretary, Tamil Nadu Pollution Control Board and Vijaya Baskaran, District Environmental Engineer, Virudhunagar District, submitted a report to the learned Judicial Magistrate stating that the environmental clearance certificate was issued by the Government of India on 06.02.2012. Recording the same, the learned Judicial Magistrate, by order dated 03.08.2012, dismissed the private complaint under Section 203 Cr.P.C.

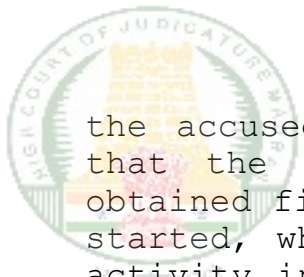
(iii) Thereafter, S.P.Muthuraman has filed a private complaint in CrI.M.P.No.1337 of 2013, before the learned Judicial Magistrate No.I, Virudhunagar, against Balaji, Member Secretary and Vijaya Baskaran, District Environmental Engineer, alleging that they did not take any action against M/s.Madras Cements Limited for commencing the construction work without the clearance certificate and therefore, they are punishable under Section 202 I.P.C. and for giving a report with incorrect information to the Magistrate, resulting in the dismissal of the complaint in C.C.No.48 of 2012 on 03.08.2012, for which they are punishable under Sections 192 I.P.C. The learned Judicial Magistrate has taken the said complaint on file in CrI.M.P.No.1337 of 2013. Challenging the same, Balaji, Member Secretary and Vijaya Baskaran, District Environmental Engineer have filed the present criminal original petitions.

2. Heard the learned counsel on either side.

3. Learned counsel for the petitioners / accused contended that the private complaint against the petitioners herein is an abuse of process of law, inasmuch as no prior sanction has been obtained to prosecute the accused, who are public servants.

4. Further, the learned counsel for the petitioners contended that the accused had not misled the Magistrate and had given a report stating that the environmental clearance certificate has been issued by the Central Government on 06.02.2012, which is indubitably correct.

5. Per contra, the learned counsel for the respondent / complainant contended that the issuance of environmental clearance certificate by the Central Government on 06.02.2012 will not absolve



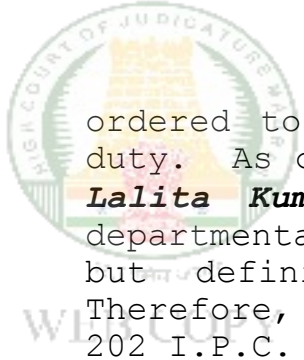
the accused from criminal liability, inasmuch as the law mandates that the environmental clearance certificate should have to be obtained first and only thereafter, any construction activity can be started, whereas, M/s.Madras Cements Limited began the construction activity in the year 2011 and the petitioners / accused had failed to take action against them in 2011 itself, which amounts to dereliction of duty and intentional omission to give information of offence by person bound to inform.

6. This Court gave its anxious consideration to the rival submissions.

7. Section 202 I.P.C. contemplates that, where an offence is committed, if a person intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both. (emphasis supplied).

8. In this case, M/s.Madras Cements Limited has not committed any cognizable offence by beginning the construction activity, without the environmental clearance certificate for the accused herein to go and lodge a Police complaint. In fact, the accused themselves can initiate prosecution under the Environment (Protection) Act for the violation of the provisions of the Act and the Rules framed thereunder. In the report submitted before the learned Judicial Magistrate, they have stated that a show-cause notice was issued to M/s.Madras Cements Limited for stopping the further construction activities and after they got the clearance from the authority concerned, they were permitted to resume the construction activities.

9. For prosecuting a person under Section 202 I.P.C., it should be shown that the said person was legally bound to give the information. In other words, there should be a law, which should cast a duty upon the person to give information to a particular authority. For example, Section 39 Cr.P.C. states that the public should give information of certain offences to Magistrate or Police. If a member of the public fails to give the information of the commission of an offence mentioned in Section 39 Cr.P.C., he can be prosecuted under Section 202 I.P.C. In this case, the learned counsel for the complainant has not produced any law, which casts a duty on the accused herein to give the information of the commission of an offence under the Environment (Protection) Act to a specified authority. On the contrary, the accused themselves have the authority to initiate prosecution before a Magistrate against the violator of the provisions of the Environment (Protection) Act. This power should not be construed and confused with the requirement "legally bound to give the information" envisaged by Section 202 I.P.C. For example, if a Police Officer does not register F.I.R. or does not file charge sheet before the concerned Magistrate, he cannot be prosecuted under Section 202 I.P.C., but, he can be



ordered to be proceeded against departmentally for dereliction of duty. As observed by the Constitution Bench of the Supreme Court in **Lalita Kumari vs. Govt. of U.P & others [2014 (2) SCC (1)]**, departmental action can be initiated for not registering an F.I.R., but definitely, not a prosecution under Section 202 I.P.C. Therefore, prosecution of the petitioners / accused under Section 202 I.P.C. is illegal.

10. Coming to Section 192 I.P.C., it is only a definition Section and the penal provision is Section 193 I.P.C. A prosecution under Section 193 I.P.C. can be initiated only in terms of Section 195(1)(b)(i) Cr.P.C. In other words, only a Court or an Officer authorized by the Court, in writing, can initiate prosecution for the offence under Section 193 I.P.C. via a private complaint. When that being so, the prosecution for the offence under Section 192 I.P.C., punishable under Section 193 I.P.C., at the instance of Muthuraman is not maintainable. Hence, the criminal original petitions deserve to be allowed.

11. In the result, the criminal original petitions are allowed and the prosecution in Crl.M.P.No.1337 of 2013, on the file of the learned Judicial Magistrate No.I, Virudhunagar, against the petitioners herein are hereby quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

/ True Copy /

Sub Assistant Registrar(CS-I)

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To:

The Judicial Magistrate No.I, Virudhunagar.

+1 CC to M/s.R.MEENA KUMARI, Advocate(SR-54567[F] dated 18/03/2019)

+1 CC to M/s.K.BALASUBRAMANI, Advocate(SR-55401[F] dated 20/03/2019)

COMMON ORDER IN
Crl.O.P. (MD) Nos.8366 & 8367 of 2013
and
M.P. (MD) Nos.1 & 2 of 2013 in both
Crl.O.Ps.
18.03.2019

ES/15.05.2019/4P/4C