

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Cr1.O.P.No.24163 of 2015

and

M.P.No.1 of 2015

1.P.R.Shanmugam

2.K.Ambujam Kalavathy

3.N.Kumaran

... Petitioners/
Accused

Vs.

1.State represented by
The Inspector of Police,
R-4, Soundarapandi Angadi
Police Station,
T.Nagar, Chennai - 17.

2.M.S.Arulvel,
Associate Vice President,
Marketing Division of Daily Thanthi.

... Respondents/
Complainant

Criminal Original Petition filed under Section 482 Cr.P.C.
to call for the records relating to Crime No.2330 of 2015 on the
file of the Inspector of Police, R-4, Soundarapandi Angadi
Police Station, T.Nagar, Chennai and quash the same insofar as
the petitioners are concerned.

For Petitioners: Mr.B.Jawahar

For R1 : Mrs.P.Kritika Kamal
Government Advocate
(Cr1.Side)

For R2 : Mr.V.Sanjeevi

O R D E R

This criminal original petition has been filed to quash the FIR in Crime No.2330 of 2015 pending on the file of the Inspector of Police, R-4, Soundarapandi Angadi Police Station, T.Nagar, Chennai, for the offence under Section 420 IPC on the complaint lodged by the second respondent herein.

2. Initially, this quash petition was filed through Mr.A.Saravanan, Advocate and at the time of admission, this Court granted stay of investigation on 15.10.2015.

3. When the matter came up for final disposal before Mr.Justice M.Nirmal Kumar on 14.08.2020 and 21.08.2020, Mr.A.Saravanan, Advocate, represented that he had already handed over the case papers to the petitioners long ago. Again on 03.09.2020, when the matter came up for hearing before Mr.Justice M.Nirmal Kumar, there was no representation for the petitioners and so, he posted the matter for dismissal on 10.09.2020.

4. After the change of roster, this matter came up before this Court on 06.10.2020 and this Court passed the following order:

"This quash petition was filed by the petitioners through Mr.A.Saravanan, Mr.K.Purushothaman and Mr.G.Viswanathan, Advocates. On 14.08.2020 and 21.08.2020, this counsel for the petitioner represented that the parties had taken change of vakalath and prayed for removal of their names from the cause list.

2. In view of the above, this Court appoints Mr.B.Jawahar (Enrollment No.2152 of 2005) (Ph.No.9840550650), Advocate of more than 10 years Standing to represent the case of the petitioners. A copy of the petition and typed set of papers are furnished to Mr.B.Jawahar.

Call on 12.10.2020."

5. Heard Mr.B.Jawahar, learned counsel for the petitioners, Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side) appearing for the first respondent/State and Mr.V.Sanjeevi, learned counsel for the second respondent.

6. A reading of the FIR shows that the petitioners' company Brainsmart Media and Advertising Private Limited, were authorized by Dina Thanthi to collect advertisements from public for publication in their newspaper; between March 2013 and June 2013 the petitioners/accused had collected a total sum of Rs.18,78,923/- from various advertisers, but, not remitted the amount to Dina Thanthi and hence, the complaint.

7. Mr.B.Jawahar, learned counsel for the petitioners submitted that the entire transaction between the petitioners and the second respondent was purely civil in nature, inasmuch as, the petitioners had a contract with Dina Thanthi and a separate contract with the advertisers. He further submitted that the petitioners had resigned from Brainsmart Media and Advertising Private Limited in 2014 and the new management headed by Anindita Mitra had sent a communication dated 10.04.2015 to Dina Thanthi stating that he is taking up the liability of the petitioners and that he would settle the amount shortly.

8. Mrs.P.Kritika Kamal, learned Government Advocate (Crl.side) appearing for the first respondent/State and Mr.V.Sanjeevi, learned counsel for the second respondent refuted the aforesaid submissions and submitted that disputed question of fact cannot be gone into in this quash petition.

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

10. It is seen that the petitioners have collected the sum of Rs.18,78,923/- between March 2013 and June 2013 from various advertisers on behalf of Dina Thanthi, but, had failed to remit the same. Whether there were two contracts as submitted by Mr.B.Jawahar is a disputed question of fact, which cannot be looked into in a quash petition. Similarly, the letter dated 10.04.2015, purported to have been sent by Anindita Mitra to Dina Thanthi, cannot by itself absolve the petitioners from criminal liability if they had really not remitted the amounts collected from the advertisers on behalf of Dina Thanthi.

11. In the light of the above, when there are prima facie materials in the FIR, the same cannot be quashed.

In the result, this criminal original petition is dismissed as being devoid of merits. Connected Crl.M.P. is closed. The High Court Legal Services Authority is directed to pay Mr.B.Jawahar, Advocate (Enrollment No.2152 of 2005), the prescribed remuneration for appearing on behalf of the petitioners in this case.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

nsd
To

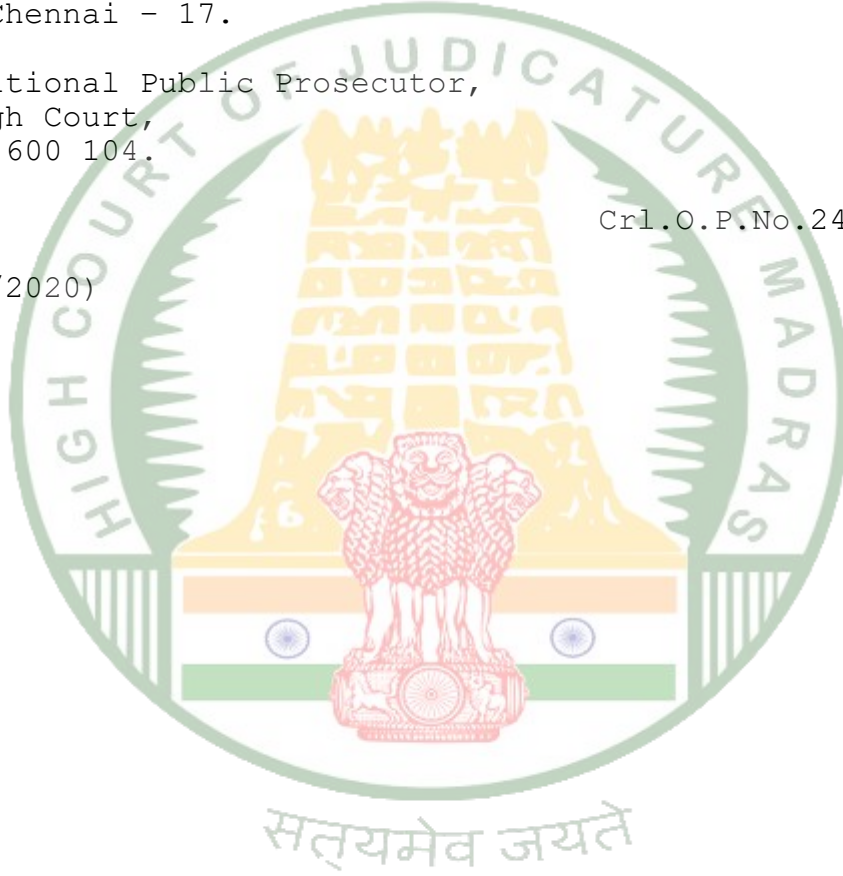
1. The Member Secretary,
The High Court Legal Services Authority,
Madras High Court,
Chennai - 600 104.

2.The Inspector of Police,
R-4, Soundarapandi Angadi
Police Station,
T.Nagar, Chennai - 17.

3.The Additional Public Prosecutor,
Madras High Court,
Chennai - 600 104.

Crl.O.P.No.24163 of 2015

RR(CO)
RMP(04/11/2020)



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