IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.09.2020

PRONOUNCED ON : 13.10.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.25052 of 2016 and
Crl.M.P.No.12136 of 2016

1.N.Vasudevan
2.S.Chandramohan
3.Ganga Prasad
4.Chandrasekar
5.Murugiah ... Petitioners

Vs.

1. State.rep.by,
The Sub-Inspector of Police,
Sadras Police Station,
Kancheepuram District.

2. Shamugavel,
Manager and Director,
M/s.Velan Infra Projects Golden Juble Plots,
Podikuppam Road, Anna Nagar (West),
Chennai-600 040. ... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the entire records in Crime No.392 of 2016 on the file of the respondent Police and quash the same as illegal and invalid.

For Petitioners: Mr.V.J.Arul Raj
For R1 : Mr.C.Iyyappa Raj,
Additional Public Prosecutor
For R2 : Mr.T.Saravanan

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ORDER

The petitioners, who are the accused in Crime No.392 of 2016, for offence under Sections 147, 294(b), 323, 420, 465, 468, 471 and 477A IPC, have filed the quash petition.

2.The gist of the case is that the 2nd respondent, who is the Managing Director of M/s.Velan Infra Projects Private Limited, Chennai, lodged a complaint to the 1st respondent Police that M/s.GVR Infra Projects Limited, Kancheepuram was awarded construction for Atomic Energy Department, Government of India, Anupuram Township at Kalpakkam, Kancheepuram District. M/s.GVR Infra Projects Limited had given a sub contract to Archit Builders Private Limited for construction work and Electrical work to the 2nd respondent. In the middle of work construction, the said Archit Builders Private Limited, left from the contract work given by M/s.GVR Infra Projects Limited. Thereafter, on the request of M/s.GVR Infra Projects Limited, the 2nd respondent took up construction work. Till 22.11.2014, a sum of Rs.3,26,99,361/-, was due to be paid by the petitioners, out of which Rs.2,00,79,298/- was paid and balance amount of Rs.1,26,20,063/- was not settled. When the 2nd respondent asked the balance amount, M/s.GVR Infra Projects Limited informed that since the 2nd respondent failed to complete the sub contract work, the amount could not be paid. Immediately the balance will be paid, after completion of the work by some other contractors. The 2nd respondent asked for a cheque in conformity to its dues. Though M/s.GVR Infra Projects Limited initially agreed, later they refused to give any cheque. Later in TRACES, it is found that M/s.GVR Infra Projects Limited has shown TDS deducted for the entire amount of Rs.3,26,99,361/- for the assessment year 2015-2016 in the account of the 2nd respondent. But the payment to the tune of Rs.2,00,79,298/- was only paid and the balance amount of Rs.1,26,20,063/- not paid. Thus, by submitting false and forged documents, M/s.GVR Infra Projects Limited cheated the 2nd respondent. When the same was questioned by him, the petitioners was threatened, manhandled and chased away from the office of the petitioners. On receipt of the complaint, the 1st respondent registered a case in Crime No.392 of 2016, against which, the petitioners before this Court.

3.The learned counsel for the petitioners submitted that M/s.GVR Infra Projects Limited took up various infrastructure projects all over India. The 1st petitioner is the former employee of RITES, the 2nd petitioner is a retired IAS Officer, the 3rd petitioner is the Managing Director of M/s.GVR Infra Projects Limited, the 4th petitioner is a qualified Chartered Accountant and the 5th petitioner is the retired Chief Engineer from Tamil Nadu Housing Board. The learned counsel further submitted that the petitioners' company was engaged in the business of construction for Atomic Energy Department, Government of India, Anupuram Township at Kalpakkam, Kancheepuram District for value of Rs.21 crores. For execution of the above work, the 2nd respondent, who is the Managing Director of M/s.Velan Infra and Velan Electricals was engaged by the petitioners' company as sub contractor, vide work order dated 12.06.2013 for electrical works and work order dated 24.10.2013 for civil works. Since the work of the 2nd respondent was not as promised, projected and as per specifications, the work order was terminated on 02.12.2014 for civil works and on

05.12.2014 for electrical works. After termination, the petitioners and their officials conducted physical verification in the construction site along with 2nd respondent. At that time, it was found that 75 tonnes of iron rods, found missing at construction site. The petitioners asked 2nd respondent to make good the shortage caused, the 2nd respondent declined to do so. Hence, the petitioners lodged a complaint on 27.12.2014 to the 1st respondent, who on receipt of the same, registered a case in Crime No.481 of 2014, for offence under Sections 406 and 506(i) IPC against the 2nd respondent.

4.It is further submitted that the 2nd respondent filed Anticipatory Bail in Crl.O.P.No.1117 of 2015, before this Court. This Court, considering, it is a business transaction, directed the petitioners and the 2nd respondent to appear before the Mediation and Conciliation Centre. The Mediation was conducted during February 2015 to April 2015, but later failed. In the meanwhile, the 1st respondent Police, in connivance with the 2nd respondent, without conducting proper enquiry, submitted a closure report during September 2015 to the learned District Munsif cum Judicial Magistrate, Thirukazhukundram, stating that the Crime No.481 of 2014 closed as 'Mistake of Fact'. He further submitted that one Mr.Elangovan, Inspector of Police, Thirukazhukundram antedated the said closure report as 28.12.2014, but filed the same before the Court only during September 2015. Had the closure report filed during December 2014, the same would have been submitted during hearing of anticipatory bail and in the Mediation.

5.Objecting over the closure report, the 5th petitioner filed a protest petition before the concerned Magistrate in Crl.M.P.No.3405 of 2016. The 2nd respondent to cover up the misdeeds in taking away iron rods worth about Rs.40 lakhs, had lodged a false complaint against the petitioners in the year 2016. Earlier, the 2nd respondent lodged a complaint before the District Crime Branch, Kancheepuram, for which, the petitioners were called for enquiry and they appeared and explained the details. The entire complaint of the 2nd respondent proceeded on wrong premise that TDS has been deducted by creating forged and false document by the petitioners' company. TDS is made for the sub contract, since it is a requirement of the Income Tax Act. In the books of account, once entries are made, corresponding TDS amount had to be credited irrespective of the amount being paid. Admittedly, in this case, the sub contract of the 2nd respondent was terminated and the communication of the same was sent on 02.02.2014, which was acknowledged by him on the same day.

6.The 2nd respondent, even after receipt of entire amount of Rs.47 lakhs from the petitioners' company for installing the lift in the construction site, he failed to make payment to M/s.OTIS Lift company to the tune of Rs.19,90,000/-. The 2nd respondent, in order to escape for the non payment of installing lift, taking away the iron rods from construction site and unable to complete the sub contract, fearing actionable damages, lodged a false complaint against the petitioners in the year 2016. Earlier to it, in the year 2014, the petitioners lodged a complaint against the 2nd respondent. Further, due to the misdeeds of the 2nd respondent, the petitioners' company suffered huge loss and later became NPA.

7.Therefore, the 2nd respondent for a business contract, gave the complaint to the 1st respondent with false allegations. The 1st respondent Police without understanding the procedure and provisions of the Income Tax Act, had mechanically registered an FIR. Hence, he prayed to quash the same.

8.The learned Additional Public Prosecutor appearing for the 1st respondent submitted that in this case, on the complaint given by the 2nd respondent, FIR was registered on 29.09.2016, for offence under Sections 147, 294(b), 323, 420, 465, 468, 471 and 477A IPC. Since it was a business transaction, initially CSR was assigned, during enquiry, the criminality of the offence committed by the petitioners was found and thereby, FIR was registered. He further submitted that the petitioners had terminated the 2nd respondent from sub contract on 02.12.2014. Earlier to it, on 10.11.2014, the petitioners had sent a letter along with the details of work done by the 2nd respondent and the payment due to the petitioners to the 2nd respondent. Thereafter, only the termination order has been passed by the petitioners. From the TDS, it is found that TDS credits have been made in the name of the 2nd respondent for the bills supplied, but no payment made to them. The transaction between the petitioners and the 2nd respondent is a business transaction. Though the transaction between the petitioner and the 2nd respondent is a business transaction, the petitioners by creating forged document, cheated the 2nd respondent. On the other hand, the petitioners booked the same as expenses in their books of accounts. Now, the petitioners' company had become NPA and no business activity is being conducted.

9.Resisting over the submission of the learned counsel for the petitioners, the learned counsel for the 2nd respondent filed counter and submitted that on 12.06.2013, the petitioners gave sub contract to the 2nd respondent for electrical works. Since the earlier sub contractor for civil works, left the infrastructure project on 24.10.2013, the 2nd respondent was compelled to take up civil contract. He further submitted that due to inefficiency and mismanagement of the petitioners and in failure in making payments for the work done by the 2nd respondent, the 2nd respondent sustained heavy loss and his entire financial cycle had gone haywire. In order to escape from the penal action contemplated by the Atomic Energy, they created a scenario as though the 2nd respondent took away the iron rods from construction site and unable to complete the sub contract. It is admitted by the petitioners that there is a due of Rs.1,26,20,063/- as on 01.12.2014 to the 2nd respondent and till date no payment is made. On the other hand, the petitioners deducted TDS as though payments made and the same is reflected in the Income Tax returns.

10.The allegation of removal of iron rods is false, since the entire construction area is secured and under the control of CISF, the transportation of 75 tonnes of iron roads in 5 lorries is impossible. Earlier, the petitioners lodged a false complaint against the 2nd respondent, for which the 2nd respondent filed anticipatory bail before this Court, which was disposed on 15.09.2015, on the ground that the Crime No.481 of 2014 was closed as 'Mistake of Fact'. The petitioners raised bill on the sub contract work in the name of the 2nd respondent and had shown that the payment were made to the 2nd respondent. After termination of sub contract, the petitioners had forged the particulars in their books of account as well as in filing the returns to the Income Tax Department. The machineries and materials of the 2nd respondent are still lying in the project site, since the petitioners did not give permission to remove them. The value of the construction equipments is around Rs.45 lakhs and raw materials is around Rs.62 lakhs.

11.It is further submitted that the Hon'ble Apex Court time and again held that FIR cannot be quashed at the initial stage without proper investigation. Hence, he prayed to direct the 1st respondent to complete the investigation.

12.This Court considered the rival submissions and perused the materials available on record.

13.The 1st petitioner is a former employee of RITES, the 2nd petitioner is a retired IAS Officer, the 3rd petitioner is the Managing Director of M/s.GVR Infra Projects Limited, the 4th petitioner is a qualified Chartered Accountant and the 5th petitioner is the retired Chief Engineer from Tamil Nadu Housing Board and they were also employed in the M/s.GVR Infra Projects Limited. The petitioners' company was engaged in the business of construction for Atomic Energy Department, Government of India, Anupuram Township at Kalpakkam, Kancheepuram District for a value of Rs.21 crores. The petitioners' company initially engaged the 2nd respondent as sub contractor for electrical works, later they were given civil work contract. During the year 2013-2014, the business relationship between the petitioners and the 2nd respondent was smooth and the transactions were properly done.

14.It is admitted by the 2nd respondent that the due for civil and electrical works is to the tune of Rs.3,26,99,361/-, out of which, Rs.2,00,79,298/- was paid and balance amount of Rs.1,26,20,063/- to be paid. There have been several meetings between the petitioners and the 2nd respondent with regard to non performance of the 2nd respondent in completing the works as expected and projected and there are exchange of notices between them. The 2nd respondent on one occasion expressed his inability to complete the balance civil works due to some financial constraint. The work of the 2nd respondent was consistently slow and finally, the 2nd respondent abandoned the work without any valid reason.

15.It is seen that there are allegations and counter allegations with regard to the manner of work, shortage of materials etc., between them. From the allegations and the counter allegations, it is seen that the dispute between the petitioners and the 2nd respondent is a commercial dispute. Mere giving credit of TDS amount in the name of the 2nd respondent, would not amount to creation of forged documents. It is an admitted fact that the relationship between the petitioners and the 2nd respondent was on contractual basis. The petitioners made payments for the work allotted to the 2nd respondent and the dispute is with regard to payment of a portion of contractual amount. Thus, the dispute is a business, civil nature and contractual one, which is given in a cloak of a criminal offence.

16.In view of the above and for the reasons stated above, this Court finds that the contractual and commercial dispute cannot be given criminal colour and it is a fit case to exercise the power Under Section 482 Cr.P.C and to quash the criminal proceedings against the petitioners and further continuation of criminal proceedings against the petitioners would amount to abuse of process of law.

17.This Criminal Original Petition is allowed and the impugned FIR in Crime No.392 of 2016, on the file of the 1st respondent is, hereby, quashed against the petitioners. The connected Criminal Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Sub-Inspector of Police,
   Sadras Police Station,
   Kancheepuram District.

2. The Public Prosecutor,
   High Court, Madras.

+1cc to Mr.T.Saravanan, Advocate, S.R.No.33902
+1cc to Mr.V.J.Arul Raj, Advocate, S.R.No.33784

PRE-DELIVERY ORDER IN
Crl.O.P.No.25052 of 2016

GP(CO)
RV(20/11/2020)