



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 20.02.2020
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THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

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Crl.R.C(MD)No.252 of 2015
and
MP(MD)Nos.1 and 2 of 2015

P.A.Subburathinam : Petitioner/Petitioner/Accused
Vs.

1.State through Inspector of Police,
District Crime Branch,
Virudhunagar District.

2.D.Sankara Narayanan
M/s.Anaball Paper Mill Pvt. Ltd.,
Thiruthangal Road, Sivakasi.
(R2 impleaded as per the order,
made in Crl.MP(MD)No.7272 of
2017 in Crl.RC(MD)No.252 of 2015,
dated 28.08.2017) : Respondent/Respondent/Complainant

Prayer: Criminal Revision has been filed under section 397
r/w 401 of Criminal Procedure Code, against the order passed in
Cr.M.P.No.6710 of 2012, dated 21.05.2015 by the Judicial Magistrate
No.II, Virudhunagar.

For Petitioner : Mr.D.Dhana Chandra Prakash
For 1st Respondent : Mr.V.Neelakandan
Additional Public Prosecutor
For 2nd Respondent : No appearance

O R D E R

This Criminal Revision is directed against the order passed
in Cr.M.P No.6710 of 2012, dated 21.05.2015 by the Judicial
Magistrate No.II, Virudhunagar.

2.The petitioner was an expert in erecting Paper and Board
manufacturing mill through the concern namely JMC Engineers and he
would technically assist for erecting the same and based upon such
assurance, the petitioner received Rs.29 Lakhs on various dates, but
failed to render any service and thereby, deceived the Directors of
the de-facto complainant. In this connection, a case in Crime No.36
of 2011 stands registered by the District Crime Branch, Virudhunagar
District and charge sheet was filed before the Judicial Magistrate



No.II, Virudhunagar for the offence under sections 406 and 420 IPC. The petitioner filed petition in Cr.MP No.6710 of 2012 before the Judicial Magistrate No.II, Virudhunagar, to discharge from the case in C.C.No.131 of 2012. The said petition was dismissed on 21.05.2015. Aggrieved by the same, the petitioner is before this court.

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3.Heard both sides and perused the materials available on record.

4.The main contention raised on the side of the petitioner/accused is that the alleged offence under section 406 IPC is beyond the period of limitation since the transaction between the de-facto complainant and the petitioner was entered on 28.10.2006, whereas the complaint was filed on 09.08.2011 and the FIR was registered on 12.08.2011 and the Judicial Magistrate No.II, Virudhunagar has omitted to find that the ingredients of section 420 IPC are not attracted as per the records available in C.C.No.131 of 2012 and the agreement between the de-facto complainant's company and the petitioner, dated 20.10.2006 has only mentioned this petitioner as erector, whereas one M/s.JMC Engineers, Ahmedabad is the main manufacturer of the machinery for the coated duplex board, but the Investigating Officer has omitted to examine the said M/s.JMC Engineers, Ahmedabad and there was no intention of cheating on the part of the petitioner and as per the agreement dated 20.10.2006, this petitioner is entitled to receive Rs.104 lakhs as his charges and has received 25% as advance only as prescribed in the agreement and hence, the deception fails in the first instance, moreover the Investigating Officer has not submitted any material before the court below as to the non-involvement of M/s.JMC Engineering, Ahmedabad and in fact, the offence under section 420 IPC could be proved only if M/s.JMC Engineers, Ahmedabad had disowned this petitioner by way of either 161(3) Cr.P.C statement or by any such material evidence and it is further submitted that it is settled law that the intention of deception must be at the beginning of the agreement itself was drawn out with dishonest intention and the main ingredient of section 420 of IPC as to wrongful gain to this petitioner or wrongful loss to the de-facto complainant is totally missing and there was 5 years delay in giving the complaint and the transaction is covered by civil law and the complaint is a willful one and preliminary evidence alone was not sufficient to frame charge under sections 406 and 420 IPC and prays that the criminal revision has to be allowed.

5.On the other other hand, the learned Additional Public Prosecutor appearing for the 1st respondent argued that the petitioner/accused induced his Directors that the petitioner was an expert in erecting Paper and Board manufacturing mill and he would technically assist for erecting the same and based upon such assurance, the petitioner received Rs.29 Lakhs, but failed to render

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complainant and hence, he gave the complaint before the police and in order to drag on the proceedings, the petitioner/accused filed the discharge petition and prays that the criminal revision has to be dismissed.

6.The de-facto complainant gave complaint to the Superintendent of Police, Virudhunagar District on 09.08.2011 and on that basis, criminal case in Crime No.36 of 2011 under section 406 and 420 IPC was registered as against the petitioner/accused. The de-facto complainant stated that being the owner of the petitioner, he gave Rs.29 lakhs for erecting Paper and Board in his company and the accused failed to render his service. On the basis of the complaint given by the de-fcto complainant, the Investigating Officer investigated the case and on the prosecution side to prove that the petitioner has received Rs.29 Lakhs from the de-facto complainant filed the copies of the cheques. On the side of the petitioner/accused, it is stated that there was an agreement between the accused and the de-facto complainant and for enforcement of the agreement, only the respondent has to file case since it is civil transaction and not the criminal transaction. It is purely civil in nature and prays that he may be discharged. No document was produced on the side of the petitioner to prove that after receipt of the amount of Rs.29 Lakhs from the de-facto complainant, he rendered his service.

7.This court has carefully perused the entire materials available on record. Prima facie case exist. Whether the accused committed the offence under sections 406 and 420 IPC, it can be decided only by way of examining the witnesses and by producing the document at the time of trial. At this stage, it cannot be decided. At this stage whether prima facie case is made out or not is to be only decided. In this case, prima facie case was made out as held by the trial court and the trial court has rightly dismissed the discharge petition. Hence, it is not necessary to interfere with the findings of the trial court.

8.In the result, this criminal revision is **dismissed**. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)

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To

1.The Judicial Magistrate No.II,
Virudhunagar.

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

Judgment made in
Crl.R.C (MD) No.252 of 2015
20.02.2020

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