



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2021

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Cr1. O.P. No.8340 of 2017
and CRL.M.P.No.5986 & 5987 of 2017

1.Power Soap Limited
R.S.No.94/1, Sembia Palayam Village,
Embalam Main Road, Korkadu Post,
Puducherry-605110

2.Dhanapal

3.Sanjay Madhan

4.P.Rajendiran

...Petitioners

Vs.

R.Balamurugan

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records of the case in C.C.No.5 of 2016 on the file of the Judicial Magistrate Court No.II, Mettur, Salem District and quash the same.

For Petitioners : Mr.S.Patrick

For Respondent : Mr.B.Gopalakrishnan
for Mr.B.Kumarasamy

ORDER

This Criminal Original Petition has been filed to quash the private complaint filed by the defacto complainant for the alleged offences under Section 200 of Cr.P.C.

2. It is the main allegation of the respondent/defacto complainant that he had money in his hand to the tune of Rs.20,00,000/- by selling 26 cents of his land. The third petitioner was known to him for more than 4 years as he was employed as General Manager in the Power Soap Limited, Puducherry. By knowing the fact that the respondent is having money in his hand, during the year 2011, the third petitioner sought financial assistance for a sum of Rs.20,00,000/- as loan for the purpose of construction of house and for his transport business, with the assurance of returning the amount



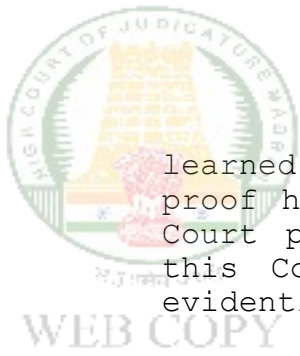
to him in January, 2013. When the respondent told the third petitioner that he was not able to send the amount in lump-sum, the third petitioner suggested the respondent to credit transfer the money to the current account of Power Soap Limited, Puducherry. Thereupon, the respondent had credit transferred a sum of Rs.18,46,943/- on various occasions to the current account of Power Soap Limited, Puducherry/first petitioner from the current accounts of his proprietary concern of Shree Sakthi Chemicals. He also assured that he will supply the sulphuric acid to the defacto complainant. Accordingly, he has given various amounts from 20.1.2011 to 10.09.2012 to the tune of Rs.18,46,943. Thereafter, the loan has not been repaid, thereby, they committed offence.

3. Now the private complaint has been taken on file in C.CNO.5 of 2016 before the learned Judicial Magistrate Court No.II, Metturu Dam. It is the contention of the learned counsel for the petitioner that he had filed this petition to quash the entire proceedings alleging that the defacto complainant is a practising advocate and he had purchased sulphuric acid from the accused regularly. The amount has been transferred in various dates from 2011 to 2012 in respect of invoices raised by the company towards the supply of sulphuric acid. Only towards the above invoices, the payments have been made through the bank transfer like NEFT and RTGS in a current account. Hence, it is the contention that it is highly improbable to contend that the loan amount has been paid from 20.01.2011 to 10.09.2012, but the bank transfer has been effected towards payment of sulphuric acid. Now, the private complaint has been filed to extract money from the petitioner. To countenance his submission, he also placed various invoices issued by the company relating to the supply of sulphuric acid to the defacto complainant.

4. This Court has perused the entire materials available on record. On perusal of the entire complaint, the complainant himself admitted that he was involved in the business of selling sulphuric acid. Be that as it may, it is the contention of the learned counsel for the petitioner that the entire private complaint is abuse of process of law. Therefore, the same has to be quashed.

5. Per contra, learned counsel for the respondent submitted that the business of spent sulphuric acid is totally different, whereas, the amount has been paid through the bank as loan which has been clearly established by the bank transfer. Therefore, this petition cannot be quashed.

6. In view of the above, this Court is of the view that though various invoices placed before this Court to show that spent sulphuric acid has been supplied to the respondent/defacto complainant, prima facie materials available on record also indicate that submission of the



learned counsel for the petitioner appears to be true. The proof has to be tested only in the Trial Court. Though this Court prima facie finds that such contentions are probable, this Court cannot pass orders at this stage going to the evidentiary value.

7. In such view of the matter, it is left to the discretion of the Trial Court to decide the case by taking note of the various business transactions, particularly, invoices issued by the petitioner and decide whether really there was any money transaction which was induced by the respondent. In that line, the trial Court has to find and decide the issue. Accordingly, this Criminal Original Petition is dismissed. Consequently connected miscellaneous petitions are closed.

8. The learned counsel for the petitioners requested this Court to dispense with the presence of the petitioners. Taking into consideration, the facts and circumstances of the case, the presence of the petitioners before the Trial Court is dispensed with except for receipt of copies, answering the charges, questioning under Section 313 Cr.P.C., or on any other date as may be required by the trial Court. They shall be represented by a counsel, who shall cross examine the witnesses on the same day, when they are examined in Chief.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

msv/nr

To

The Judicial Magistrate, Court No.II,
Mettur, Salem District.

+cc to Mr.M.R.Gokul Krishnan, Advocate SR. No. 61588

+lcc to Mr.B.Kumarasamy, Advocate SR. No. 61600

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AD (CO)

PR (21/12/2021)