



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P. (MD)No.11780 of 2021

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A.Murugan ... Petitioner / Sole Accused
vs.

1.The State of Tamil Nadu,
rep. by the Inspector of Police,
Thalaiyuthu Police Station,
Tirunelveli District.
(Crime No.132 of 2021) ... 1st Respondent / Complainant

2.K.Jothi Lakshmi ... 2nd Respondent /
Defacto Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the impugned FIR in Crime No.132 of 2021 under Sections 406, 420 and 506(i) of IPC dated 26.04.2021 on the file of the first respondent and quash the same as illegal.

For Petitioner : Mr.I.Pinaygash
For R1 : Mr.T.Senthil Kumar
Additional Public Prosecutor
For R2 : Mr.A.Sivasubramanian

O R D E R

Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for R1 and the learned counsel for the defacto complainant.

2. This Criminal Original Petition has been filed to quash the FIR in Crime No.132 of 2021 registered on the file of the Thalaiyuthu Police Station, Tirunelveli District for the offences under Sections 406, 420 and 506(i) of IPC.

3. The learned counsel for the petitioner reiterated all the contentions set out in the memorandum of grounds and called upon this Court to quash the impugned FIR.

4. Per contra, the learned Additional Public Prosecutor for R1 as well as for the learned counsel for the defacto complainant submitted that no case for quashing has been made out.

5. I carefully considered the rival contentions and went through the materials on record. There is no dispute that the petitioner and the defacto complainant entered into an oral



agreement. The defacto complainant had engaged the petitioner to construct a home for her. A rate fixed by the petitioner was Rs.1,650/- per square feet. The defacto complainant had to pay a total sum of Rs.13,36,000/- as total charges. The defacto complainant admittedly had paid a sum of Rs.12,36,000/-. She had to pay only a balance amount of Rs.1,00,000/- alone. However, the petitioner abandoned the work without completing the building. According to the defacto complainant, even though the petitioner had received a sum of Rs.12,36,000/-, he had completed only around 70% of the works. Therefore, the petitioner had to engage another contractor to complete the remaining works. She had to spend almost Rs.4,00,000/- for doing so. Since the petitioner did not come forward to make good the loss suffered by the defacto complainant, she lodged the instant FIR.

6. Even if I assume the entire case of the defacto complainant to be true, still no offence is made out. The petitioner and the defacto complainant had entered into a commercial transaction. There was no element of entrustment. Therefore, the essential ingredients of Section 406 of IPC are not at all attracted. Again, the offence of cheating will be made out, only if it can be shown that the petitioner had a dishonest intention from the very inception. In this case, even according to the defacto complainant, 70% of the works was already completed. Therefore the element of dishonesty from the inception cannot be said to be present. It is quite possible that the petitioner had erroneously estimated the total amount that may be required by him and probably, he demanded more amount on account of cost escalation and the defacto complainant was not agreeable for the same.

7. Be that as it may, the defacto complainant could have only sued the petitioner for damages. She could have gone to the civil Court or the jurisdictional consumer forum. The question of launching criminal prosecution against the petitioner does not arise at all. A pure civil case has been given a criminal color. The impugned FIR is quashed. This Criminal Original Petition stands allowed. However, the other rights and remedies of the defacto complainant are left open.

Sd/-

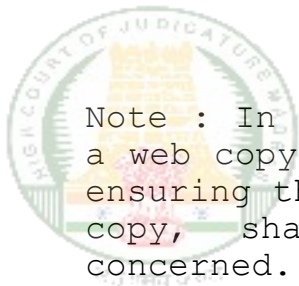
Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

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- To
- 1.The Inspector of Police,
Thalaiyuthu Police Station,
Tirunelveli District.
 - 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.A.SIVA SUBRAMANIAN, Advocate (SR-38655[F]
dated 14/12/2021)

+1 CC to M/s.I.PINAYGASH, Advocate (SR-38925[F] dated 15/12/2021)
Crl.O.P.(MD)No.11780 of 2021
13.12.2021

SAR (CO)
GC(27.12.2021) 3P 5C