

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.04.2022

Delivered on : 17.06.2022

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P.No.5347 of 2019

and

CrI.M.P.Nos.3072 & 3073 of 2019

A.G.Gokuldas

... Petitioner

Vs.

N.Ramu

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code to call for the records pertaining to the proceedings in C.C.No.190 of 2018 on the file of the learned Judicial Magistrate - IV, Salem and quash the same.

For Petitioner : Mr.C.Rajasekaran

For Respondent : Mr.L.Rajendran

O R D E R

This Petition had been filed to quash the case in C.C.No.190 of 2018 on the file of the learned Judicial Magistrate - IV, Salem.

2. The learned Counsel for the Petitioner submitted that the Respondent had filed Criminal Complaint regarding the dispute with regard to the payment from the Railway Authorities.

2.1. The learned Counsel for the Petitioner submitted that the Petitioner was an Engineer having its own Construction Company viz., Devi Construction at Metro Lodge Building, T.P.Road, Kottayam-686003 and the residence of the Respondent is Ammal Yeri Street, Dhadagapatti, Salem who is the Complainant before the learned Judicial Magistrate - IV, Salem. The Respondent was a Railway Contractor engaged in Civil Works undertaken by the Railways. Accordingly, there was an agreement regarding the civil works undertaken within a limit of Ernakulam to Trichur upto 104 Km regarding removing cuttings, removing all silt and foreign materials in the pipe box, by removing all

vegetables at bed level, including bailing of water by stacking removed materials in the suitable locations and this should be recorded by the Railway Officials. The payment shall be made based on the recording in the Management Book and this was payable to the Petitioner by the Railways. There was an agreement between the Petitioner and the Respondent, the Respondent was employing the labourers for executing the work. As per the agreement 75 % of the bill has to be paid to the Respondent and 25% was to be paid to the Petitioner herein, who was a consultant Engineer. Subsequent to the contract, there was a dispute. The learned Counsel for the Petitioner submits that the Respondent sent notice to the Petitioner, for which the Petitioner had sent reply. But still Respondent preferred a Complaint to Legal Aid on 26.03.2007 and 12.04.2007, but there was no result. Therefore, the Respondent preferred a Complaint to the learned Judicial Magistrate - IV, Salem registered a case under Sections 406 & 420 of IPC. Subsequently, Annadanapatty Police in Salem City had registered a case in Cr.No.1661 of 2008 under Sections 406 & 420 of IPC. On investigation, the Police had found that it was a false case, therefore they referred the case as mistake of fact, which was recorded by the learned Judicial Magistrate. Notice was also sent to the Respondent before recording the Referred Charge Sheet by the learned Judicial Magistrate on 10.10.2015 after a gap of 5 years. For the same cause of action and for the alleged dispute regarding the amount and contract undertaken by the Respondent/Complainant with the Railway Authorities, he had preferred a false Complaint in C.C.No.190 of 2018 on the file of the learned Judicial Magistrate -IV, Salem. Therefore, learned Counsel for the Petitioner seeks to quash the Complaint as it is only an abuse of process of Court to cause harassment to this Petitioner.

3. It is to be noted that earlier Complaint by the Respondent to the Legal Aid Authorities was not considered by them. Again a Complaint to the learned Judicial Magistrate was made, based on which, Cr.No.1661 of 2008 was registered and on investigation found that it was not a genuine and bona-fide Complaint and it was referred as mistake of fact by the Investigation Officer and closed the FIR in Cr.No.1661 of 2008 in the year 2010 which was recorded by the learned Judicial Magistrate, after service of notice on the Respondent/defacto Complainant herein. For the same cause of action, the Respondent herein had filed C.C.No.190 of 2018 after a gap of five years. Therefore, the learned Counsel for the Petitioner seeks to quash the case in C.C.No.190 of 2018.

4. The learned Counsel for the Respondent vehemently objected to the line of the argument of the learned Counsel for the Petitioner regarding quashing of Criminal Complaint stating that on receipt of notice from the Court regarding the closure report filed by the Investigation Officer, the Respondent had filed this Criminal Complaint as Protest Petition, is not true, after five years this Criminal Complaint is given. Therefore, the same cannot be quashed.

5. On consideration of the rival submissions of the learned Counsel for the Petitioner and the learned Counsel for the Respondent and on perusal of the typed set filed along with this Petition, what had been stated by the learned Counsel for the Petitioner is found acceptable as already a Complaint filed by the Respondent in the year 2008 was registered as FIR in Cr.No.1661 of 2008 and the same was closed by the Investigation Officer in the year 2010. After receipt of report from the Investigation Officer, the Court had also recorded the closure report for which the Petitioner herein cannot file a Complaint in the year 2018 after a gap of five years. If at all there is a claim which is to be agitated by way of Suit only and not in the criminal Complaint. Therefore, the vehement objection of the learned Counsel for the Respondent/Complainant is rejected as per the Provision of under Section 482 of Cr.P.C., as per the reported ruling of the Hon'ble Supreme Court in 1992 Supp (1) SCC 335:1992 SCC (cri) 426 in the case of State of Haryana Vs. Bhajanlal. The submissions of the learned Counsel for the Petitioner is found acceptable in the light of the typed set furnished along with this Petition. Hence, the case against the Petitioner is liable to be quashed.

In the result, this Criminal Original Petition is allowed.

The case in C.C.No.190 of 2018 on the file of the learned Judicial Magistrate - IV, Salem is quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

dh

To

1. The Judicial Magistrate - IV,
Salem.

2. The Public Prosecutor
High Court of Madras
Chennai 600 104.

+1cc to Mr.L.Rajendran, Advocate, S.R.No.37015

+1cc to Mr.C.Rajasekaran, Advocate, S.R.No.37816

CRL.O.P.No.5347 of 2019

KV[co]

NSK/11/07/2022