



Crl.R.C.No.568 of 2022

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.07.2022

PRONOUNCED ON : 18.10.2022

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.568 of 2022
and Crl.M.P.No.5883 of 2022

1. Thaiga Exports Pvt. Ltd.,
Rep. By its Managing Director,
No.50, 14th Cross 1st Floor,
Sirugeri Ram Street,
Anna Nagar Extension, Puducherry.

2. Anbalagan,
Managing Director,
Thaiga Exports Pvt. Ltd.,
No.50, 14th Cross 1st Floor,
Sirugeri Ram Street,
Anna Nagar Extension, Puducherry.

3. Deivajothi,
Director,
Thaiga Exports Pvt. Ltd.,
No.50, 14th Cross 1st Floor,
Sirugeri Ram Street,
Anna Nagar Extension, Puducherry. .. Petitioners/Accused



Crl.R.C.No.568 of 2022

WEB COPY

Vs.

1. The State rep.by Inspector of Police,
CBCID Police Station,
Pudhucherry.

.. Respondent / Complainant

2. Vijayakumar

.. Respondent/Defacto Complainant

PRAYER : This Criminal Revision Case is filed under Section 397 read with Section 401 of Cr.P.C., to set aside the order dated 30.12.2021 made in RCS No.48 of 2010 in Crime No.14 of 2015 on the file of the learned Chief Judicial Magistrate, Puducherry and set aside the same and allow the Criminal Revision, as prayed for.

For Petitioners : Mr.AR.L.Sundaresan, Sr.Counsel
for M/s.AL.Ganthimathi

For Respondents : Mr.V.Balamurugane (for R1)
Public Prosecutor for Puducherry.
Mr.M.Palanivel (for R2)

ORDER

By an administrative order, this case was posted before this Court.

2. The Criminal Revision Case is filed against the order dated 30.12.2021 made in RCS No.48 of 2010 in Crime No.14 of 2015 on the file of the learned Chief Judicial Magistrate, Puducherry.



Crl.R.C.No.568 of 2022

WEB COPY

3. Brief facts leading to the filing of the Criminal Revision Case, is as follows:

(i) The 2nd respondent herein have filed a petition under Section 156(3) of Cr.P.C., before the learned Chief Judicial Magistrate, Pudhucherry against the petitioners herein alleging that he was a retired Superintendent of Police, Pudhucherry and that the 2nd petitioner was running a private limited company under the name and style of Thiaga Exports Private Limited and that the 2nd respondent and the 2nd petitioner developed friendship and became acquainted with each other and the 2nd petitioner gave him an impressive description about the company, its products and developing markets and created a positive impression in the mind of the defacto complainant and the defacto complainant believed the words of the 2nd petitioner.

(ii) Further, the 3rd petitioner being the wife of the 2nd petitioner used to visit the defacto complainant's house and that during the said period, the 2nd petitioner contacted the defacto complainant and showed him the balance



Crl.R.C.No.568 of 2022

WEB COPY

sheet of the company, filed with the Registrar of Companies dated 31.03.2011 and the corresponding proceedings of the Annual General meeting of the company held on 03.09.2011 and that the Company was in need of additional funds and if the funds are provided, it will take the company to a new height and persuaded the defacto complainant to provide funds to the company and assured to allot equity shares of the company and accordingly, demanded a sum of Rs.50 Lakhs and the defacto complainant agreed to provide only Rs.41 Lakhs from his savings and that of his wife and daughters savings and the three of them together had invested a sum of Rs.41 lakhs and that the amount was received by the 2nd petitioner herein in the name of the company in March, April and August, 2012 and that the shares were not allotted as promised and when enquired about non issuance of shares, the 2nd petitioner gave a reply stating that a resolution has been passed in the meeting convened for that purpose, increase the authorized capital and the 2nd respondent herein believed the words of the 2nd petitioner but nothing transpired with them for several months and that the defacto complainant lodged a complaint with the Inspector of Police on 06.06.2015 and the same



Crl.R.C.No.568 of 2022

WEB COPY

was forwarded to the Sub Inspector of Police, CBCID Police Station for further action, but till date no action was taken and hence, he was constrained to file a petition under Section 156(3) of Cr.P.C and the same complaint appears to have been forwarded by the learned Chief Judicial Magistrate to the 1st respondent herein and the same was registered as Crime No.14 of 2015 against the petitioners herein for the alleged offences under Section 420 IPC read with Section 34 IPC.

(iii) The sum and substance of the complaint is that the 2nd respondent herein along with his wife and daughter filed civil suits against the petitioners herein in O.S.Nos.53 of 2015, 58 of 2015 and 109 of 2015 on the file of the III Additional District Court, Puducherry and Principal District Court, Puducherry, for recovery of amounts alleged to have been paid by the respective plaintiffs to the 1st petitioner company, as alleged share application money.

(iv) The matter is pending before the competent civil court for



Crl.R.C.No.568 of 2022

WEB COPY

adjudication and decision as to whether at all any amount was paid by the defacto complainant to the 1st petitioner company and as to whether at all it was as share application and as to whether the plaintiffs are entitled return of the said money, as prayed for in the suits, the 2nd respondent herein has filed a petition under Section 156(3) on 21.08.2015.

(v) The petitioners herein filed the petition in Crl.O.P.No.24780 of 2015, challenging the proceedings in Crime No.14 of 2015 on the file of the Inspector of Police, CBCID Police Station, Puducherry. The said petition was heard by this Court and by order dated 18.04.2018, this Court was pleased to dismiss the petition observing that

“since the defacto complainant himself is a retired Superintendent of Police, interest of justice will be served if senior Superintendent of Police (Crime) is directed to monitor the investigation in Crime No.14 of 2015 and if it is found that the entire transaction is civil in nature, it is needless to state that the Inspector of Police shall close the FIR.”

(vi) Accordingly, investigation was done and ultimately, the



Crl.R.C.No.568 of 2022

WEB COPY

respondent police by order dated 31.01.2020 finding that the ingredients could not have been fulfilled Section 420 IPC and the dispute between the defacto complainant and the petitioners, is a business dispute and purely civil in nature, closed the proceedings as 'Action Dropped'.

(vii) Aggrieved over the same, the 2nd respondent filed a protest petition in RCS No.48 of 2010 before the learned Chief Judicial Magistrate at Puducherry. The learned Chief Judicial Magistrate on going through the evidences and records ultimately allowed the protest petition by order dated 30.12.2021 finding that the present Investigating Officer made an opinion in contra to the document which he collected and hence, directed to conduct further investigation and collect evidence and then file a final report as against the A1 to A3 and transferred the investigation from the present Investigating Officer to another officer, CBCID. Aggrieved against the said order, the present Criminal Revision Case has been filed.

4. The learned Senior Advocate, Mr.AR.L.Sundaresan, appearing



Crl.R.C.No.568 of 2022

WEB COPY

for the revision petitioners/accused would contend that the matter was investigated thoroughly by the investigation officer and finding that the dispute is purely civil in nature, dropped further action and accordingly, filed the negative report in RCS No.48 of 2010, before the learned Chief Judicial Magistrate, Puducherry. The 2nd respondent herein filed a protest petition in the said RCS No.48 of 2010. Without going through the findings given by the investigation officer, the learned Chief Judicial Magistrate, Puducherry, has indulged himself to find out a third case neither that of the defacto complainant nor of the accused and hence, he chose to set aside the order and for affirmation of the negative report filed by the investigation officer.

5. Heard the learned counsel for the 1st respondent Mr.Balamurugane, learned Public Prosecutor-in-charge (Pondicherry) and the learned counsel for the 2nd respondent/defacto complainant Mr.M.Palanivel.

6. The learned Public Prosecutor-in-charge (Pondicherry), would contend that in view of the fact that the defacto complainant himself is a



Crl.R.C.No.568 of 2022

WEB COPY

retired Superintendent of Police, for the Pondicherry Police unit and there was a money transaction between the parties and as per the defacto complainant, the accused received a sum of Rs.65 Lakhs from the 2nd petitioner herein and since the Superintendent of police has not rendered any service as promised he was asked to repay the amount, out of which the 2nd respondent defacto complainant has refunded a sum of Rs.41 lakhs and remaining Rs.24 lakhs is balance to be paid and further it is the case that for the Rs.24 lakhs due from the accused/petitioners herein, the defacto complainant and his wife and daughter have filed comprehensive civil suits in O.S.No.53/2015, 58/2015, and 109/2015 and the same are pending before the III Additional District Court and Principal District Court (Pondicherry) for the recovery of the amount alleged to have been paid by the respective plaintiffs to the petitioners company herein. The investigation officer has completed his investigation and found that the dispute is a business dispute purely civil in nature.

7. After hearing the rival submissions of all the three learned counsel



Crl.R.C.No.568 of 2022

WEB COPY

appearing on behalf of the respective parties and the documents filed in the typed set of papers, I find that the 2nd respondent/defacto complainant has come forward with the specific case that based upon the representation made by the petitioners herein, the defacto complainant, his wife and his daughter were made to believe that they would be allotted equity shares in the company, run by the 1st petitioner/accused, for which he has paid Rs.41 lakhs from the bank account transfer, out of which still Rs.24 lakhs has to be paid. So is also the averments in the plaints in the above said Original Suits.

8. During the course of investigation, it is focused that there are disputed question of fact as to the assertion of the accused that Rs.41 lakhs was paid by the defacto complainant towards the pre-existing debt and the version of the defacto complainant is that Rs.41 lakhs was paid only towards equity shares. It is to be stated that mere pendency of civil suit will not mean that a criminal prosecution cannot be maintained. The defacto complainant both in his complaint as well as in the plaint before the competent civil Court has taken a specific stand that the accused has received the amount towards



Crl.R.C.No.568 of 2022

WEB COPY

equity shares and the accused were not able to raise the equity shares thereby, indebted to the defacto complainant.

9. In the course of the investigation, the accused has taken a stand that complainant has taken the loan earlier out of which he has paid Rs.41 lakhs only for the discharge of the said loan and accordingly, in the said Crl.O.P.No.24780 of 2015, dated 18.04.2018, this Court directed the case to be further investigated. Based upon the further investigation as ordered by the above said order dated 18.04.2018, the investigation officer after going into the various records especially the SMS sent by the 2nd accused to the defacto complainant has come to the conclusion that it is only a commercial transaction between the parties and the matter is civil in nature and accordingly, filed negative report in RCS No.48 of 2010.

10. A protest petition has been filed by the defacto complainant and that was taken and ordered further investigation by the learned Chief Judicial Magistrate, Puducherry, by observing that the case of the accused could not



Crl.R.C.No.568 of 2022

WEB COPY

be accepted and that the amounts were received with some malafide intention to do illegal act.

11. As contended by the learned senior Advocate, the learned Chief Judicial Magistrate had invented a new case. Admittedly, the amount said to have been paid by the defacto complainant, his wife and daughter are through bank transfer. The complainant both in his complaint as well as in the plaint has taken a stand that he paid the amount for the purpose of equity shares and hence, there is no criminal intention prior to the commission of alleged money transaction in order to attract the offence of Section 420 IPC and the amount was collected by the accused for investing in equity shares whereas, the amount was invested and equity share certificates were not issued to the defacto complainant.

12. Some of the SMS communications between the parties were referred to, which will clearly show that the accused was willing to take the



Crl.R.C.No.568 of 2022

WEB COPY

defacto complainant. However, he was asking for the refund of the amount and hence, I find that it is only a civil dispute and the learned Magistrate has taken a nobody's case and the observation made by the learned Chief Judicial Magistrate that the said amount was received for illegal purpose from the stand of the accused, is not justified for the simple reasons that it is for the prosecution to prove the case beyond reasonable doubt not for the accused to demonstrate the charge otherwise and therefore, the investigation officer has rightly dropped all further proceedings treating the investment of the money for the share and also taking note of the stand of the defacto complainant as a plaintiff in the civil suit, has reflected in the plaint that it is for investment of share. Dropping of all further action and filing of the negative report in RCS appears to be just and fair and hence, the order passed by the learned Chief Judicial Magistrate is not sustainable in law.

13. Accordingly, the order of the Chief Judicial Magistrate, Puducherry, dated 30.12.2021, directing further investigation by another officer of CBCID, is hereby set aside. The negative report filed by the



Crl.R.C.No.568 of 2022

WEB COPY

investigation officer in RCS No.48 of 2010 stands approved and accordingly, the case in Crime No.14 of 2015 stands closed. It is open to the parties to agitate their respective rights before the civil Court, since Civil Suits are pending touching upon the very factum of allegations levelled against each other.

14. With these observations, the Criminal Revision Case is allowed.

Consequently, the connected Criminal Miscellaneous Petition is closed.

18.10.2022

Internet : Yes

Index : Yes/No

ars



WEB COPY



Crl.R.C.No.568 of 2022

To

1. The Chief Judicial Magistrate,
Pudhucherry.

2. The Inspector of Police,
CBCID Police Station,
Pudhucherry.

2. The Public Prosecutor,
Pondicherry.



WEB COPY



Crl.R.C.No.568 of 2022

RMT.TEEKAA RAMAN,J.,

ars

Pre-delivery order in
Crl.R.C.No.568 of 2022

18.10.2022