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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.8002 OF 2017

&

CRL.M.P.NOS.5772 & 5773 OF 2017

S.Krishnamoorthy

... Petitioner

Versus

1. State Rep By:
Inspector of Police,
District Crime Branch,
Tiruvallur District.
2. P.M.Ravichandran
3. The Project Officer,
DRDA,
Thiruvallur Collectorate,
Thiruvallur.

... Respondents

(R3-impleaded as per order dated
19.01.2022 in Crl.M.P.No.412/2022
in Crl.O.P.No.8002 of 2017)

PRAYER:

Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records and quash the Final Report in C.C.No.17 of 2017 pending on the file of the Learned Judicial Magistrate No-I, Thiruvallur.

For Petitioner : M.Govindaraju

For Respondents: Mr.A.Damodaran
Additional Public Prosecutor
For R1 & R3
Mr.R.Saisundar for
Mr.K.Ravi Kumar for R2



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ORDER

This petition has been filed to call for the records and quash the Final Report in C.C.No.17 of 2017 pending on the file of the Learned Judicial Magistrate No-I, Thiruvallur.

2. The petitioner/accused in C.C.No.17 of 2017 who was facing trial for the offences under Sections 406 & 420 of IPC, has filed this quash application.

3. The contention of the petitioner is that the petitioner entered into an agreement to construct 312 toilets with the 2nd respondent/defacto complainant. This is a part of the Corporate Social Responsibility (CSR) Scheme. The purpose of the Scheme is to implement "One Toilet One house" and 312 toilets have to be constructed in Nemam Village, Tiruvallur District of which the petitioner has so far constructed 149 toilets, 99 toilets are under construction and in respect of 83 toilets, so far, no construction has commenced. This is purely a business transaction based on the agreement hence the criminal complaint cannot be proceeded with. He further submitted that the defacto complainant alleges as though the petitioner has not even constructed one toilet. On the contrary during investigation it was found that agreement has been fulfilled half way and some of the toilets have to be constructed. He further submitted that as per the agreement, Rs.6750/- would be given by the 2nd respondent company, Rs.2,200/- would be released by DRDA and Rs.1,000/- by the beneficiary, in total Rs.9,950/- is the cost of toilet. In most of the cases, the DRDA has not paid the amount as well as the beneficiary has not paid the initial amount. Hence there are some difficulties in the implementation of the project hence against the petitioner, criminal case cannot be proceeded with.

4. In support of his contention, the learned counsel for the petitioner relied upon the judgment of the Hon'ble Apex Court in Sushil Sethi and another Vs. State of Arunachal Pradesh and others (2020) 3 SCC 240 for the reason that the prosecution is unable to prove any ingredients of cheating, the presence of fraudulent dishonest intention while making initial promise or misrepresentation. In this case, construction of the toilets have been half way done. In view of the same, it cannot be said that the petitioner should undergo a criminal trial despite the fact that no case is made out at all. He further referred to the judgment in Mitesh Kumar J. Sha Vs. The State of Karnataka and Ors. reported in MANU/SC/0986/2021.

5. The learned counsel for the 2nd respondent/defacto complainant submitted that the petitioner had been paid the entire amount for the construction of 312 toilets. He had paid



Rs.23,75,860/- . The petitioner by giving one reason or the other has been delaying the completion of the toilets and in some case the toilets have not been constructed after several reminders. Finding that the petitioner is not intending to construct the toilets after receiving the money, complaint has been lodged.

6. The learned Additional Public Prosecutor submitted that on receipt of the complaint, in this case First Information Report registered and witnesses examined. The respondent Police visited the scene of occurrence, in Nemum Village, made physical verification of the toilets, prepared Observation Mahazar and rough sketch, examined the witnesses LW1 to LW23 and filed Final Report. He further submitted that the points raised by the petitioner to be decided in trial and not in the quash application.

7. The Project Officer, District Rural Development Officer filed a counter and submitted that it is not a procedure in DRDA to enter into a private agreement with NGO or any other agency. In this case though they have not entered into an agreement with the NGO in this case, subsidy of Rs.2,200/- given for construction of toilets after completion of the toilets. So far 149 toilets completed and subsidy was given. If the petitioner completes rest of the toilets, they would give the subsidy, the petitioner by using the name of the DRDA, they are not responsible for delay, is a defence to wriggle out from their misdeeds. DRDA go by the directions given by the Ministry of Rural Development and they implement only rural development programmes. He further submitted that the District Collector is the Chairman of the Governing Body. The Governing body at the District level provides guidance and directions to DRDA. The Governing body in DRDA is responsible for actual implementation which is headed by an Additional Collector/Project Director. In this case, the petitioner being an NGO, to implement the scheme and avail subsidy if they are eligible and nothing more.

8. Considering the submissions and on perusal of the materials, this Court is not inclined to entertain this petition. Hence this Criminal Original Petition is dismissed. It is made clear that the observations made herein will not affect the petitioner's right in the trial and it is made only for the purpose of the disposal of this petition. The trial Court to complete the trial within a period of four months from the date of receipt of a copy of this order, since the Trial is pending without progress from 2017 citing pendency of the above petition.



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9. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

dna/mdl

To

1. The Judicial Magistrate No-I,
Thiruvallur.
2. The Inspector of Police,
District Crime Branch,
Tiruvallur District.
3. The Project Officer,
DRDA,
Thiruvallur Collectorate,
Thiruvallur
4. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.K.Ravikumar, Advocate, S.R.No.10223
+lcc to M.Govindaraju, Advocate, S.R.No.10038

CRL.O.P.No.8002 of 2017
&
CRL.M.P.Nos.5772 & 5773 of 2017

KG(CO)
PM/01/03/2022