



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.03.2022

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

Crl.O.P(MD)No.966 of 2020

and

Crl.M.P(MD)No.421 of 2020

1.Venkateswari

2.G.Velmurugan

... Petitioners/Accused Nos.1 & 2

-vs-

1.State rep. by

The Inspector of Police,

Thirupparankundram Police Station,

Madurai District,

(In Crime No.221 of 2014). ... 1st Respondent/Complainant

2.Yogeswaran

... 2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records pertaining to the Impugned Charge Sheet in C.C.No.387 of 2018, on the file of the learned Judicial Magistrate No.VI, Madurai and quash the same as illegal.

For Petitioner : Mr.S.Sadeskumar

For R1 : Mr.M.Sakthi Kumar

Government Advocate

For R2 : M/s.R.Vidhya

O R D E R

The petition has been filed to quash the charge sheet in C.C.No.387 of 2018, on the file of the learned Judicial Magistrate No.VI, Madurai for the offences under Section 406, 420, 294(b) and 506(i) IPC.

2. The crux of the charge against the petitioners is that the defacto complainant is doing construction business. He entered into an agreement on 20.03.2013 with the petitioners for constructing the house. For that, the defacto complainant has spent a sum of Rs.32,00,000/- for constructing the house. However, the petitioners have paid only a sum of Rs.26,00,000/- and the remaining amount has not been paid. Despite the request made by the defacto complainant, the petitioners have not paid the said amount and they abused the defacto complainant with filthy language.



3. The learned counsel appearing for the petitioners would contend that in the contract there is no specific amount agreed by the petitioners and thereafter, they have paid a sum of Rs.26,00,000/-. Now, the contractor in order to extract more money from the petitioners, has lodged a false complaint. Absolutely, there is no materials available to proceed against the petitioners for the various offences under Sections 406, 420, 294(b) and 506(i) of IPC and hence, it is a case of abuse of process of law.

4. Heard the learned counsel appearing for the petitioners and the learned Government Advocate (Crl.side) appearing for the first respondent and perused the entire materials available on record.

5. Law was set in motion for the allegation of non-payment of certain amount. The main grievance of the defacto complainant is that some amount has not been paid towards constructions made and other charges. It is seen from the entire materials collected by the prosecution that there is some due and in the contract there is no mention about the specific amount to be paid. What was agreed is only a sq.ft rate. Therefore, the question of breach of trust will not arise in this case.

6. It is relevant to note that under Section 406 IPC., the ingredients in order to constitute a criminal breach of trust are '(i) entrusting any person with property, or with any dominion over property'. A perusal of the above, to attract the offence, a criminal breach of trust the property should have been entrusted or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "Criminal breach of trust". Therefore, only the above ingredients are satisfied the prosecution could succeed in proving the charge under Section 406 IPC.

7. Here, in a given case, the entire materials reveal the fact that there is a money transaction between the parties and there is no breach of trust to attract the offence under Section 406 IPC.

8. Similarly, there is no case made out from the materials that the accused have an intent to deceive the defacto complainant from the inception to attract Section 420 IPC. The only grievance of the defacto complainant is that there is some difference in money transaction. Therefore, such transaction never be construed as a cheating unless dishonest intention to cheat the person was present from inception. The materials collected from the prosecution is taken a face value did not constitute the offence under Sections 406



9. In respect of Section 294(b) of IPC is concerned, except contending that the accused abused in a filthy language, no other overtact is made out by the witnesses against the petitioners. Not even the nature of the abusive words found in the statement of the witnesses. Therefore, the offence under Section 294(b) IPC is also not attracted.

10. In respect of Section 506(i) IPC is concerned threat must be a really cause danger to the life. Except the general allegation that they have threatened, there is no specific allegation stated by any of the witnesses. Therefore, this Court is of the opinion that only the civil transaction has given a colour of criminal case.

11. In such view of the matter, driving the person to undergo the order of trial is futile exercise and abuse of process of law. Accordingly, the proceedings in C.C.No.387 of 2018, on the file of the Judicial Magistrate No.VI, Madurai is quashed and the Criminal Original Petition is allowed.

Sd/-

Deputy Registrar(A/Cs)

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/ /2022

Sub Assistant Registrar(CS)

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To

1. The Judicial Magistrate No.VI, Madurai.
2. The Inspector of Police,
Thirupparankundram Police Station,
Madurai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.S.SADESKUMAR, Advocate (SR-10059[F] dated 04/03/2022)

Crl.O.P(MD)No.966 of 2020
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SE(CO)

TR(16.03.2022) 3P 5C