



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.01.2022

CORAM:

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

CrI.O.P (MD)No.14274 of 2021

and

CrI.M.P. (MD)Nos.7477 & 7478 of 2021

WEB COPY

1.George Diaz

2.Stephen Fernando

3.Ananthi Diaz

... Petitioner/ Accused Nos.1, 3 & 4

Vs

1.State represented by  
the Inspector of Police,  
District Crime Branch,  
Nagercoil,  
Kanyakumari District.  
(Crime No.17 of 2019)

...Respondent/Defacto Complainant

2.Sam Sunder Nicholas

...Respondent/Respondent

**PRAYER:** Petition filed under Section 482 Code of Criminal Procedure, to call for the records pertaining to the charge sheet in C.C.No.131 of 2021 on the file of the Judicial Magistrate No.I, Nagercoil, Kanyakumari District, in Crime No.17 of 2019, dated 30.08.2019 on the file of the first respondent and quash the same as illegal as against the petitioners alone.

For Petitioners

: Mr.T.Lajapathi Roy

For R1

: Mr.E.Anotny Shaya Prabahar

Additional Public Prosecutor

For R2

: Mr.P.Mahesh Kumar

### **ORDER**

Heard the learned counsel appearing for the petitioners, learned Additional Public Prosecutor appearing for R1 and the learned counsel appearing for the defacto complainant.

2. The case of the prosecution is that the defacto complainant entered into a construction agreement dated 02.09.2015 with M/s.Uranus Innovation Turnkey Solution Private Limited. The first petitioner herein George Diaz and one Suresh Muthukrishnan who were classmates had agreed to hand over a fully constructed villa to the defacto complainant. The consideration was fixed at Rs.50,00,000/- . The defacto complainant paid a sum of Rs.10,00,000/- upfront. The balance amount was to be paid as a loan



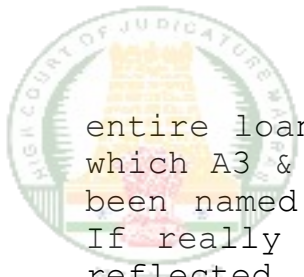
by the Axis Bank. The Villa was to come up of the land belonging to the father-in-law of the first petitioner. The Villa was to come up and handed over within a period of 12 months.

3. The allegation of the defacto complainant is that the construction was never completed. The learned counsel appearing for the defacto complainant would further allege that in all such cases, the creditor bank will release instalments only stage by stage. It appears that the M/s.Uranus Innovation Turnkey Solution Private Limited was struck off and that they were able to secure the entire loan amount from the Axis Bank even before completing the construction. This according to the defacto complainant indicates that the accused had a dishonest intention from the very inception. Though the petitioner's counsel would argue that the case on hand is having predominantly a civil profile and as per the construction agreement, the aggrieved party can avail arbitrary remedy, I am not persuaded by the said submission.

4. The prosecution may have both the civil profile as well as a criminal dimension. The existence of alternative remedies such as filing a suit or initiating arbitration proceedings will not debar the affected party from launching the criminal prosecution also. Therefore, the defacto complainant is fully justified in initiating the criminal prosecution leading to registration of Crime No.17 of 2019 on the file of the first respondent. The first respondent conducted investigation and filed the final report. Cognizance of the offences was taken. The case itself was taken on file as C.C.No.131 of 2021 on the file of the Judicial Magistrate No.I, Nagercoil.

5. The only question that falls for consideration is whether the impugned prosecution should be allowed to continue as against A3 & A4. A3 is the father-in-law of the first accused and it is on his land the proposed Villa was to come up. The defacto complainant had entered into construction agreement dated 02.09.2015 only with M/s.Uranus Innovation Turnkey Solution Private Limited. The first accused and Suresh Muthukrishnan are its directors. It was Suresh Muthukrishnan who signed on behalf of the company. It is also stated that the first accused, second accused Suresh Muthukrishnan and the defacto complainant were classmates. Therefore, I can safely come to the conclusion that the first accused as well as the second accused must have held out assurance to the defacto complainant. Thus, there are *prima facie* materials to fasten penal liability on the first accused and the second accused.

6. There is also considerable force in the contention of the learned counsel for the defacto complainant that the company was struck off in the year 2016 and even thereafter, the account continued to be operated. There is equally substance in her contention that even before completion of the construction, the



entire loan amount was disbursed. But these are transactions with which A3 & A4 may not really be concerned. Of-course, A3 & A4 have been named in the statements recorded under Section 161 of Cr.P.C. If really they were also involved, it would have definitely been reflected in the construction agreement dated 02.09.2015. I therefore come to the conclusion that while the defacto complainant is very much a victim in the whole transaction, he should train his guns only on A1 and A2.

7. The accused are not being prosecuted for an offence under Section 138 of the Negotiable Instruments Act. The defacto complainant is prosecuting the accused for IPC offences. Therefore, the human agencies will have to face the music and the company need not be arrayed as an accused. Since there is a complete absence of any incriminating material against the petitioners 2 and 3 herein, the continuation of the impugned prosecution against them is not really warranted. The impugned proceedings stand quashed as regards the accused 3 and 4.

8. Considering the overall facts and circumstances, the learned trial Magistrate is directed to conclude the trial in C.C.No.131 of 2021 on merits and in accordance with law within a period of eight months after lifting of the lockdown restrictions.

9. With this direction, the Criminal Original Petition is partly allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

rmi

**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.

To

1.The Judicial Magistrate No.I, Nagercoil,  
Kanyakumari District.



2.The Inspector of Police,  
District Crime Branch,  
Nagercoil,  
Kanyakumari District.

3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

+1 CC to M/s.T.LAJAPATHY ROY, Advocate ( SR-1526[F] dated 12/01/2022  
)

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11.01.2022

KB(08.02.2022) 4P 5C