



Crl.R.C.No.1987 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2023

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

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Vimal

... Petitioner

Vs.

Madhesan

... Respondent

PRAYER: Criminal Revision Case filed under Sections 397 r/w. 401 of Cr.P.C, to set aside the order in CMP.No.1707 of 2023 dated 26.10.2023 passed by the Judicial Magistrate-II, Walajahpet, Vellore District.

For Petitioner : Mr.C.Iyyapparaj
for Mr.R.Raghul

ORDER

The petitioner had filed a private complaint against the respondent for the offence under section 420, 294b and 506(ii) IPC.



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2. The gist of the complaint is that during the year 2018, the respondent had approached the petitioner claiming that they had received orders from the Southern Railway for supply of Blue Metals and the place of supply of Blue Metals is near Thalangai Railway Station, Ranipet District and as per the request, the Blue Metals were supplied to the respondent and the total supply was to the tune of Rs.2,53,65,545/-. Out of which, the respondent has to pay a sum of Rs.15,75,000/-. The statement of accounts for the period between 01.04.2018 and 20.11.2019 was confirmed by the respondent, who agreed to pay the amount, but failed to make the payment. When the petitioner had asked about the due, the respondent along with his men abused and threatened claiming that nothing can be done to him and that, this amount cannot be collected from him. Thereafter, the petitioner lodged a complaint before the police in CSR.No.1281 of 2019 and only due to the in-action on the part of the police, the petitioner filed a complaint under section 156(3) of Cr.P.C. The petitioner had examined himself as PW1 and narrated the facts of the case. He had examined one Mariappan and one Arul



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who were aware about the fact of supply of Blue Metals to the respondent.

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Further he had produced the statement of accounts acknowledged by the respondent, the invoice copy, lorry delivery challan and other relevant documents. But the lower court referring to section 106 of Indian Evidence Act stating that the burden of proving fact specially within knowledge of any person, the burden of proving that fact is upon him and in this case, the documents placed on record according to the lower court are the self-created documents by the petitioner and hence, dismissed the complaint.

3. On perusal of the materials and documents produced before this Court, it is seen that the statement of account dated 21.11.2019 has been acknowledged by the respondent in which due of Rs.15,75,000/- is recorded. Further, 69 copies of invoices for supply of crushed stones, its quantity and its value have been produced. Along with invoices, lorry delivery receipts are also produced confirming the supply of Blue Metals/crushed stones and delivery to the respondent. All these facts have not been considered by the lower court while passing the impugned order.



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4. On perusal of these documents, prima facie it is seen that there is no dispute with regard to the supply and also the amount of Rs.15,75,000/- which the respondent is bound to pay to the petitioner, after delivery of the crushed stones which have been converted and used by the petitioner in execution of the railway contract and on completion of the contract, receiving the contract amount indicating misappropriation and cheating.

5. In view of the above, this Court set aside the order of the lower court and the lower court shall re-consider all these documents and the statement of witnesses and pass appropriate orders. Accordingly, this Criminal Revision is disposed of.

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Index : Yes/No

Speaking order/Non-speaking order

Neutral Citation : Yes/No

To



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- 1.The Judicial Magistrate-II, Walajahpet, Vellore District.
- 2.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR,J.

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