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Crl.OP.No.7442 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2024

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.OP.No.7442 of 2024

and

Crl.M.P.Nos.5400 & 5405 of 2024

1.N.Sathya Narayanan

2.L.Nanjan

... Petitioners

Vs.

1.The State,

Rep. by the Inspector of Police,
Kolacombai Police Station,
Coonoor Sub Division,
Kolacombai, Coonoor,
The Nilgris – 643 223.

2.GTK Infrastructure Limited,

Rep. by its Authorised Signatory,
Arjunan, S/o. Ammasaiyappan,
Office at New No.232/ Old No.186,
City Centre 3rd Floor,
Purasawalkam High Road,
Kilpauk, Chennai – 600 010.

... Respondents

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, praying to allow this Criminal Original Petition and call for the records in connection with the charge sheet in C.C.No.6 of 2024 on the file of the Judicial Magistrate Court, Coonoor and quash the same as far as the petitioners/ Accused 1 and 2 is concerned.



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For Petitioner : Mr.J.Chandran Sundar Sashikumar

For Respondent : Mr.S.Udaya Kumar,

Government Advocate (Crl.side)

ORDER

The petition is filed to quash the final report taken on file by the learned Judicial Magistrate Court, Coonoor in C.C.No.6 of 2024.

2. A complaint for offence under Sections 379, 424, 426 and 447 of IPC was filed. On probe by the respondent police, final report was filed ultimately for offences under Sections 406, 424 of the Indian Penal Code and Section 25(c) of the Indian Telegraph Act.

3. The sum and substance of the final report is that the petitioner herein, who is the landlord has allowed the Aircel Company to erect their cellphone tower for lease rent. It is alleged that during a survey conducted, it was found that the tower and ancillaries are missing. Later the complainant came to know that the petitioner has dismantled the tower and sold it as a scrap as if he has obtained no objection from the lessee Company. In fact the Company has gone into liquidation and all



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its assets are made subject matter of NCLT proceedings. No clearance or consent was given to the landlord/ petitioner to dismantle the tower and sell it as a scrap. Therefore, the allegation of breach of trust, fraudulent removal of property as well as violation of Telegraph Act have been made out.

4. The learned counsel appearing for the petitioners submits that a lease deed between the 2nd petitioner and Aircel Limited was entered on 9th October 2006 on a specific condition that the lessor will be entitled to a rent of Rs.4,000/- for the first three years period and Rs.4,600/- for the second three years period, Rs.5,290/- for the third three years period and Rs.6,084/- for the fourth three years period. It is to be completed on 31.10.2018. Contrary to this lease agreement, the Aircel Company, which went into liquidation stopped paying the rent from November 2017. Therefore, after waiting for a period of 5 years, notice was issued by the landlord on 22.06.2022 stating that from 01.11.2017 to 31.10.2018 a sum of Rs.73,008/- is due and payable. Thereafter, the lease has come to an end. The Company which is supposed to remove the tower neither removed it nor maintained it. In view of the risk of safety, notice was caused to the complainant Company to dismantle the



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tower within one month, failing which the petitioners will dismantle the same at the costs of the complainant and sell it as a scrap. Pursuant to this notice, the petitioner has acted upon and dismantled and defrayed the proceeds of Rs.1,50,000/- towards the arrears of lease and also damages for use and occupation for 5 years.

5. The learned counsel appearing for the respondent would vehemently oppose the quash petition on the ground that the lease was for a period of 12 years, for 11 years lease rent was regularly paid, thereafter, there was financial crisis in the Aircel Company and hence it was taken over by the complainant company. The matter was referred to NCLT and it is pending. The petitioner taking advantage of notice, which is *per se* not sustainable legally had sold the tower material which attracts offence under Sections 406, 424 IPC and Section 25(c) of the Telegraph Act.

6. In response to this submission, the learned counsel for the petitioners would submit that the tower has become defunct more than 6 years before it is dismantled, therefore, there is no ingredient to attract the offence under the Telegraph Act. The offence under Sections 406



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and 424 IPC will get attracted only if there was a breach of trust or removal of the property illegally. In this case the landlord who had waited for more than 6 years had dismantled the tower only after causing notice, informing the complainant Company that the existence of the tower is causing danger to the life and liberty, hence it will be dismantled at their costs, if they fail to dismantle the tower. Therefore, he submits that neither 406 nor 424 IPC gets attracted in this case. Therefore, the complaint has to be quashed.

7. This Court after giving its anxious consideration on the above submissions is of the opinion that the complainant Company, which has entered into a lease agreement with the landlord ought to have either removed the tower on expiry of the lease period or should have sought permission of the landlord to keep their tower in their land on payment of rent or damages for more than 6 years. The complainant did not renew the lease or pay damages for the property left in the land of the accused. The accused had no criminal intention either to commit breach of trust or secret disposal of the property. He had made clear to the complainant that the tower standing in his property causes threat to the life and safety of the public is on risk. He had sought the complainant Company to



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remove / dismantle the tower within the period of one month. Only thereafter he has dismantled the tower.

8. When there is no *mens rea* to commit any offence of breach of trust or removal of property with criminal intention, the offence under Sections 406 and 424 IPC will not get attracted. Likewise the tower which has become defunct cannot be taken as an instrument of telegraph to attract the offence under Section 25 of the Telegraph Act.

9. Hence, this Court find force in the submission of the learned counsel for the petitioner to quash the complaint.

10. Accordingly, this Criminal Original Petition is **allowed** and the charge sheet in C.C.No.6 of 2024 on the file of the Judicial Magistrate Court, Coonoor is quashed. Consequently, the connected miscellaneous petitions are closed.

05.08.2024

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To

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Coonoor.
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Dr.G.JAYACHANDRAN,J.

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