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Crl.R.C.No.1427 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1427 of 2024

and

Crl.M.P.Nos.12014 & 12015 of 2024

Abhishek Mehta

... Petitioner/A6

Vs.

M/s.Penna Cement Industries Limited,
Having registered office at
No.705, Lakshmi Nivas, Road No.3,
Banjara Hills Hyderabad – 500 034.
Having Zonal Office at 8, Old No.8/1,
Casa Major Road, 2nd Cross Street,
Jerret Garden, Egmore,
Chennai – 600 008.
Rep. by its Deputy General Manager (Marketing)
Mr.M.Nageswar Rao.

... Respondent

Prayer: Criminal Revision Petition filed under Sections 438 and 442 of Bharatiya Nagarik Suraksha Sanhita, 2023, praying to set aside the order dated 16.08.2024 passed in Crl.M.P.No.49615 of 2024 in C.C.No.3091 of 2015 by the Chief Metropolitan Magistrate, Egmore, Chennai by allowing the Criminal Revision.

For Petitioner : Mr.Paul Manoj Pandian



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ORDER

This petition has been filed seeking to set aside the order dated 16.08.2024 passed in Crl.M.P.No.49615 of 2024 in C.C.No.3091 of 2015 by the learned Chief Metropolitan Magistrate, Egmore, Chennai.

2.The petitioner/A6 in C.C.No.3091 of 2015, who was facing trial on a private complaint filed by the respondent for offences under Sections 120-B r/w 464, 468, 471, 477A and 420 of I.P.C., filed a discharge petition under Section 245 Cr.P.C. and the same was dismissed by order dated 16.08.2024, against which, the present revision has been filed.

3.The case projected against the petitioner is that the petitioner as Managing Partner of M/s.Infinite Salts Worldwide and Director of M/s.Urban Tree Infrastructure (P) Limited was doing business with the respondent complainant and placed orders. The respondent supplied cements, issued Debit notes without authorisation and swindled, misappropriated a sum of Rs.3,04,38,430/- (Rupees Three Crores Four lakhs Thirty Eight thousand Four hundred and Thirty only). According to the respondent/complainant, the petitioner falsified the accounts, made false claim, created documents and



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cheated them. Hence, a private complaint filed.

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4.The contention of the learned counsel for petitioner is that the respondent earlier lodged a police complaint to the Commissioner of Police on 22.11.2013, the petitioner appeared before the CCB police, gave explanation. During enquiry, police found that it is purely a commercial transaction and respondent attempted to give a criminal colour. Further finding already civil suit pending between the petitioner and respondent in O.S.No.416 of 2015, C.S.No.555 of 2015, C.S.No.560 of 2015 and C.S.No.562 of 2015 and closed the complaint. Thereafter, the present complaint filed. The respondent without disclosing true facts filed a private complaint against the petitioner and others. The petitioner and other accused approached this Court filed a petition in CrI.O.P.No.9559 of 2018 (batch), which got dismissed on 24.09.2021. This has been cited as an answer to the petitioner's discharge petition under Section 245 of Cr.P.C. and the trial Court dismissed the discharge petition filed by the petitioner and not considering it on merits, against which, the present revision.

5.It is seen that CrI.M.P.No.49615 of 2024 was dismissed not on merits. Hence, notice to the respondent dispensed with.



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6.Considering the submissions made and on perusal of the material and typed set produced by the petitioner, it is seen that the respondent earlier lodged a police complaint and the same was closed and thereafter, private complaint filed. In the meanwhile, several civil suits filed and pending between the petitioner and respondent. It is a private complaint instituted otherwise than on police report. The procedure adopted is that evidence of the witnesses will be recorded, option is given to the petitioner/accused to cross examine the witnesses at a earlier stage or wait till completion of the evidence of the witnesses and thereafter entitled to file a discharge petition. Depending on the outcome of the discharge petition, the case can proceed further, then witnesses can be cross examined. This being so, it is left to the petitioner to cross examine at pre-cognizance or post cognizance, but in any event, the discharge petition to be considered only on merits based on the evidence produced by the complainant, and the defence raised by the accused and on the materials produced and thereafter orders to be passed. In this case, the order passed is not on merits, making reference to dismissal of earlier quash application and dismissing the discharge petition not considering on its own merits is not proper.



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7.In view of the same, this Court set asides the impugned order dated 16.08.2024 passed in Crl.M.P.No.49615 of 2024 by the learned Chief Metropolitan Magistrate, Egmore, Chennai. The trial Court is directed to consider the petitioner's discharge petition afresh and thereafter to pass orders on its own merits.

8.Accordingly, the Criminal Revision Case is allowed. Consequently, connected Criminal Miscellaneous Petitions are closed.

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Index : Yes/No
Internet : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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M.NIRMAL KUMAR, J.

rsi

To

- 1.The Chief Metropolitan Magistrate,
Egmore, Chennai.
- 2.The Public Prosecutor,
High Court, Madras.

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and
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