



CRL O.P. No.28547 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.10.2024

CORAM

The Hon`ble Mr. Justice P.DHANABAL

Crl. O.P. No.28547 of 2022
and Crl.M.P. No.17514 of 2022

B. Kumaresan S/o. M.K. Balashanmugam Petitioner / Accused /
Plaintiff.

Vs.

1. State represented by:-

The Inspector of Police,
CID Police Station, Puducherry.
[Cr. No.33 of 2022]

... Respondent / Complainant

2. Murugavel S/o. Arumug ... Complainant / Respondent / Defendant

PRAYER: The Criminal Original petition is filed under Section 482 of
Criminal Procedure Code to call for records in Cr. No.33 of 2022 on the
file of the respondent police and to quash the same..

For petitioner : Mr. Gopinath, Senior Counsel
For Mr. K. Balu

For Respondent : Mr. M. V. Ramachandramurthy
Public Prosecutor [Puducherry]
Assisted by Mrs. N.Danalatchumy [for R1]

Mr.

M. Magesh [for R2]

ORDER



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This Criminal Original Petition has been filed to quash the FIR in Cr. No.33 of 2022 on the file of the Inspector of Police, CID Police Station, Puducherry.

2. The case of the prosecution is that the defacto complainant is running a company in the name and style of M/s. Venus Electricals Works and he is working as a CPWD, Class-I, LD full Contractor. The petitioner / accused herein was awarded a contract in the year 2016 for Rs.12.58 crores by the Government of Puducherry for execution of "conversion of Low Tension overhead lines into UG Cables System with service connection and street lights in Pooranakuppam in Puducherry Coastal area under CDRRP Scheme. Thereafter the accused approached the defacto complainant / 2nd respondent for completion of work and the accused assured to pay money after deducting the commission amount. While so, the petitioner Mr. Kumaresan, the Proprietor of M/s. Ganesh Electricals, Chennai entered into an agreement dated 27.07.2016 in the presence of one Venugopal. After the execution of agreement, the accused did not handover the copy of the agreement to the defacto



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complainant. When the defacto complainant asked about the agreement between the accused and the project implementation agency, they did not provide the copy of agreement and asked to do the electrical work. Believing the words of the accused, the defacto complainant had completed 95% of work by spending Rs.10 crores. The accused also paid money for the work done by the defacto complainant on instalment basis and so far paid Rs.3.67 crores and balance amount of Rs.4,96,93,695/- is due from the accused. Hence, the defacto complainant lodged a complaint before the SBCID police, but no action was taken. When he asked about the payment, the accused and the said Venugopal threatened to hand over the remaining unused materials purchased for the work. Thereafter, the accused along with Venugopal, threatened the defacto complainant, hence he lodged the complaint.

3. The learned Senior counsel appearing for the petitioner would contend that the 2nd respondent has given a complaint before the 1st respondent police and based on the complaint, they registered an FIR in Cr. No.33 of 2022 under Section 420 of IPC. In fact, there are business



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transactions based on the contract between the parties and there is no any criminal intention to cheat the defacto complainant from the inception.

Based on the contract between them, the defacto complainant executed the work. The defacto complainant undertook to provide labourers for the petitioner's contract. The materials for the contract were made available to him and given advance of Rs.3,68,58,577/- as early as from 28.07.2017 to 30.03.2019 for mobilizing labourers, but the defacto complainant had started the work belatedly. The 2nd respondent had filed bills only to the tune of Rs.3,67,78,577.34 and inflated the bills and illegally kept the amount of Rs.80,000/- and he also not executed the work as instructed by the petitioner and later he attempted to stop the execution of the project, which was thwarted by the petitioner. The petitioner has incurred a sum of Rs.1,37,46,075/- towards repairs to the work done by the 2nd respondent. On 02.07.20019, the petitioner received a mail from Project Implementation Agency, Puducherry that the materials and equipments were abducted with M/s. Venus Electrical Works, the 2nd respondent. The defacto complainant / 2nd respondent is liable to pay the balance of Rs.80,000 /-. The petitioner also lodged a



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complaint in CSR No.8 of 2019 and the same is pending and also requested the Inspector of Police, CID to recover the cables and other materials and the same was not considered. The petitioner also filed a Civil Suit in O.S. No.548 of 2021 pending on the file of Principal District Court, Tiruvallur seeking recovery of money and the defacto complainant has also filed a written statement. Thereafter, the 2nd respondent has lodged a complaint before the respondent police. Based on the complaint, the respondent police have registered a case in Cr. No.33 of 2022 for the offence under Section 420 of IPC. The work completion certificate was issued and payments to the petitioner has not been disbursed. Hence the petitioner has filed a Writ petition in W.P. No.10598 of 2021 and the same was allowed to dispose the undisputed amounts. After obtaining the order from this Court, he was not able to get the payments. The petitioner also filed a Crl. O.P. No.25754 of 2021 for not to harass the petitioner as against the police and the same was ordered by directing the petitioner to appear before the respondent police and make his submission in support of his claim. But thereafter, this FIR has been registered. Even the entire FIR did not constitute any



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ingredients of the offences against the petitioner. Therefore, the pending FIR is abuse of process of law and the same is liable to be quashed.

4. The learned counsel appearing for the 2nd respondent would submit that this defacto complainant is the sub-contractor, who supplied the goods and executed the work on behalf of the petitioner and after execution of work, he failed to repay the said amount and thereby, he committed cheating and investigation is at initial stage and it needs elaborate investigation and therefore, the petition is not maintainable at this stage and hence the same is liable to be dismissed.

5. The learned Public Prosecutor [Puducherry] appearing for the 1st respondent would contend that there are disputes between the parties in respect of payment of money based on the contract. As per complaint, the petitioner received money from the defacto complainant and also executed the agreement, but did not return the copy of the written agreement and also the defacto complainant executed the work, but the petitioner failed to pay the money for the work executed by the



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complainant and thereby, cheated the amount of Rs.4,96,93,695/- and hence the petition is liable to be dismissed.

6. Heard both sides and perused the materials available on record.

7. Upon hearing both sides and perusing the records, it is observed that there is a dispute pending between the parties in respect of execution of work and payment based on the contract. Even according to the complainant, the defacto complainant executed the work based on the contract between the parties. As per the complaint, there is an agreement executed by both the parties and they also signed in the agreement, but thereafter, the petitioner failed to return the copy of the agreement. Further the defacto complainant also executed the work, but, the petitioner failed to pay the contract amount. The petitioner also admitted the contract between the parties, but according to the petitioner, work was not completed by the defacto complainant and already the defacto complainant also raised bills only for Rs.3,67,78,577.34 and illegally kept the amount of Rs.80,000/- and also not executed the entire work.



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According to the petitioner, he also sustained loss to the tune of Rs.1,37,46,075/-. Therefore, from the records, it is clear that the alleged allegations shows that the dispute is civil in nature out of the contract in respect of the execution of works.

8. It is also an admitted fact that already, the petitioner has also filed a Suit as against the defacto complainant for recovery of money and the defacto complainant has also not taken any steps to lodge complaint immediately after the alleged occurrence. As per the FIR, the work was executed in the year 2016, but the complaint was lodged only in the year 2022. Moreover, a civil case has also been filed by the petitioner in December 2021 and the defacto complainant also filed a Written statement on 05.07.2022, but the FIR has been registered on 18.10.2022 belatedly. The defacto complainant has not taken any steps and not lodged any complaint immediately after the alleged occurrence and after filing of a Civil Suit, that too after filing written statement, lodged a complaint for the contractual obligations, thereby the civil matter has been given a colour of criminal nature.



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9. Moreover, it is an admitted fact that there is a money dispute between the parties based on the contract for execution of electrical work. Both the parties are claiming money against each other and the same has to be decided by the competent civil Court. Even as per the contents of FIR, there are money dispute between the parties, already part payment was also made by the petitioner and no ingredients to constitute the offence punishable under Section 420 of IPC and no any materials to show that the petitioner had intention to cheat the defacto complainant from the inception and dishonestly induced the defacto complainant. Therefore, the pending FIR without any materials as against the petitioner is abuse of process of law and the same is liable to be quashed.

10. Therefore, the Criminal Original Petition is allowed and the pending FIR in Cr. No.33 of 2022 on the file of the respondent police as against the petitioner is quashed. No costs. Consequently, the connected miscellaneous petition is closed.



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index: Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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To

1. The Public Prosecutor, High Court, Madras.
2. The Public Prosecutor, Puducherry.
3. The Inspector of Police, CID Police Station, Puducherry.

P.DHANABAL,J

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