



CRL O.P. No.28541 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.09.2024

CORAM

The Hon'ble Mr. Justice P.DHANABAL

Crl. O.P. No.28541 of 2022
and Crl. M.P. No.17508 of 2022

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

1. State represented by:-

The Inspector of Police,
CID Police Station, Puducherry.

[Cr. No.34 of 2022]

... Respondent /

Complainant

2. Subramaniyan S/o. Kuppusamy ... Complainant / Respondent

PRAYER: The Criminal Original petition is filed under Section 482 of Criminal Procedure Code to call for records in Cr. No.34 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
Assistant Public Prosecutor [Puducherry]
Assisted by Mrs. N.Danalatchumy [for R1]

Ms.

R. Hemalatha [for R2]

ORDER



CRL O.P. No.28541 of 2022

This Criminal Original Petition has been filed to quash the FIR in Cr. No.31 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. K.S. Mani Electricals for more than 26 years and he is working as a CPWD, Class-I, LD full Contractor. While so, Mr. Kumaresan, the Proprietor of M/s. Ganesh Electricals, Chennai entered into an agreement dated 21.07.2016 and 24.08.2016 and both agreed for the work of Rs.13,25,97,548/-. As per the agreement, from the date of work order, within 28 days, for Rs.81,10,563/-, a fixed deposit form has to be submitted. For that, the said Kumaresan requested to transfer the amount through RTGS to his company, thereby, the defacto complainant transferred a sum of Rs.81,10,563/- and through RTGS, a sum of Rs.14,09,216/- to the Indian Overseas Bank account of M/s Ganesh Electricals, Porur Branch. After verifying the Bill of Quantity and Contract agreement, the original agreement was signed and the petitioner represented that he will send the



CRL O.P. No.28541 of 2022

original through courier. Thereafter, work was done on war-footing basis. The defacto complainant also obtained quotation from Polycab and Finolex and ready for the purchase of UG cable. While so, there was an internal problem between AE(E), EE(E), JPD (General) and JPD (Tech), thereby, there was a delay in months together. Again, the said Kumaresan /petitioner represented that UG cable dealers asked for advance payment for the supply of UG cable and thereby demanded Rs.70 lakhs and the same was transferred to the petitioner's account through RTGS on 05.05.2017. Thereafter, the defacto complainant obtained loan of Rs.3 crores based on the work order and the email agreement. Thereafter, there were some changes made in GST and also restriction in taking river sand and also work to be done through 4 way outdoor pillar box with 600A / 800A MCCB and 8 way and all 16SWG CRCA sheets have to be used for the work. When all the instances were brought to the knowledge of Kumaresan and sought for excess payment for the above said reasons, he also assured. Thereafter, the pillar box samples were also tested and the extra payment also agreed by the said Kumaresan and thereafter, the said Kumaresan has not paid any amount



CRL O.P. No.28541 of 2022

to the defacto complainant, but the Kumaresan obtained bills from M/s. Ganesh Electricals. Therefore, he cheated the defacto complainant.

3. The learned 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.34 of 2022 under Section 420 of IPC. In fact, there are business 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.4,19,07,761/- as early as from 03.08.2017 to 21.07.2018 for mobilizing labourers, but the defacto complainant had started the work belatedly. The 2nd respondent had filed bills only to the tune of Rs.3,01,21,954/- and inflated the bills and illegally kept the amount of Rs.1,16,75,244/- and he also not executed the work as instructed by the petitioner and later he attempted to stop the



CRL O.P. No.28541 of 2022

execution of the project, which was thwarted by the petitioner. The petitioner incurred a sum of Rs.2,39,71,909/- towards repairs to the work done by K.S. Mani Electricals. On 02.07.20019, the petitioner received a mail from Project Implementation Agency, Puducherry that the materials and equipments were abducted with K.S. Mani Electricals, the 2nd respondent. The defacto complainant / 2nd respondent is liable to pay the balance of Rs.1,16,75,244/-. The petitioner also lodged a complaint in CSR No.5 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.557 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.34 of 2022 for the offence under Section 420 of IPC. On 11.11.2022, the respondent police came to the petitioner's house and seized I-pad, mobile phone, ATM card, cash for a sum of Rs.3 lakhs and documents and also threatened the petitioner's



CRL O.P. No.28541 of 2022

family members and assaulted his driver. For that also, he lodged a complaint before the respondent police on the same day. 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.25753 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 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



CRL O.P. No.28541 of 2022

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 Assistant Public Prosecutor appearing for the 1st respondent would contend that there are disputes between the parties in respect of payment of money based on the contract, whereby 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 transferred the money to the account of the petitioner on various dates and also the defacto complainant executed the work, but the petitioner failed to pay the money for the work executed by the complainant and thereby, cheated the amount of Rs.3,78,76,898/- and hence the petition is liable to be dismissed.

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



CRL O.P. No.28541 of 2022

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 transferred some amount on various dates to the account of the petitioner and also he 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.3,01,21,954/- and illegally kept the amount of Rs.1,16,75,244/- and also not executed the entire work. According to the petitioner, he also sustained loss to the tune of Rs.2,39,71,909/-. 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



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CRL O.P. No.28541 of 2022

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 2018 and the defacto complainant also taken his equipments from the spot on 02.07.2019 and also sent a letter to the petitioner on 07.10.2020 itself, 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.

9. Moreover, it is an admitted fact that there is a money



CRL O.P. No.28541 of 2022

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 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.34 of 2022 on the file of the respondent police as against the petitioner is quashed. No costs. Consequently, the connected miscellaneous petition is closed.

24.09.2024

index: Yes/No
Internet: Yes/No

10/12



CRL O.P. No.28541 of 2022

Speaking/Non Speaking order
mjs

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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
mjs

CRL. O.P. No.28541 of 2022



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CRL O.P. No.28541 of 2022

24.09.2024