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CRL O.P. Nos.23440 and 2854 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.10.2024

Pronounced on : 25.11.2024

CORAM

The Hon'ble Mr.Justice P.DHANABAL

Crl.O.P.Nos.23440 and 2854 of 2022
and Crl.M.P.Nos.1298, 1299 and 14954 of 2022

Crl.O.P.No.23440 of 2022

1. R.Raymond Roy
S/o Rethinasamy

2. Mercy
W/o R.Raymond Roy

... Petitioners / Accused 1 & 2

Vs

Rajkumar
S/o Rathinasamy

...Respondent / Complainant

Crl.O.P.No.2854 of 2022

1. Jayabal
S/o Chinnapillai

2. Kanikkaimary
W/o Jayabal

... Petitioners / Accused 3 & 4

Vs

Rajkumar
S/o Rathinasamy

...Respondent / Complainant



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PRAYER in both Petitions:- The Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, praying to call for records in C.C. No.1531 of 2021 on the file of the Judicial Magistrate No.I, Coimbatore District and quash the same.

In both Petitions

For Petitioners : Mr. C.Iyyapparaj

For Respondent : Mr.S.Mohanasundaram

COMMON ORDER

These Criminal Original Petitions have been filed to quash the proceedings in C.C. No.1531 of 2021 on the file of the Judicial Magistrate No.I, Coimbatore District.

2. The short facts necessary to dispose of the petitions are as follows:-

The defacto complainant, who is the respondent in both the petitions has filed a complaint before the learned Judicial Magistrate-I, Coimbatore under Section 156(3) of Criminal Procedure Code, 1973 against the petitioners, stating that, his father-in-law was in need of



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money, for which he decided to approach the Muthoot Finance for pledging jewels. At that time, the 1st Accused / Raymond Roy, who is the brother of the defacto complainant, informed that, if the jewels are pledged in Canara Bank at Palladam, the interest rate would be very less. Therefore, he pledged jewels on 31.08.2016 in the name of the defacto complainant, his wife Buvaneshwari, his brother Ramond Ray (A1), his brother's wife Mercy (A2), Jayapal (A3) and Kanikkaimary (A4), who are in-laws of A1, and obtained loan of Rs.15,75,000/-. The Ramond Ray is none other than the brother of the defacto complainant, namely Raj Kumar. Mercy is the wife of Ramond Ray, besides Jayapal and Kanikkaimary are the parents of Mercy and in-laws of Ramond Ray. The defacto complainant had given a sum of Rs.1,20,000/- to his brother as interest and to settle the amount. When the complainant contacted his brother to redeem the jewels from the Bank, they did not turn up and told him that the Bank sold the jewels on auction. Thereafter, the complainant enquired the Bank and came to know that, no auction was held and the Ramond Roy redeemed the jewels and cheated the defacto complainant. On 10.08.2020, when the same was questioned by the



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complainant, he agreed to settle the amount within three months.

Thereafter, on 06.10.2020, when he along with his wife while traveling in a two wheeler, all the accused waylaid the complainant and caused criminal intimidation. Further, they refused to repay the jewels which were pledged by them. Therefore, he lodged the complaint before the police and police have not taken any steps, and thereafter, he filed a complaint under Section 156(3) of Cr.P.C and the same was converted into private complaint by the learned Magistrate and taken cognizance for the offences under Sections 294(b), 120(b), 420 and 506(1) of IPC. Now, the 1st and 2nd accused have challenging the proceedings pending against them in CC.No.1531 of 2021 on the file of learned Judicial Magistrate-I, Coimbatore through Crl.O.P.No.23440 of 2022 and the 3rd and 4th accused have challenging the said proceedings through Crl.O.P.No.2854 of 2022.

3. The learned counsel appearing for the petitioners would submit that the complainant is none other than the own brother of the 1st accused and there was a family dispute pending between the parties and the



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alleged jewels pledged by the 1st accused belonged to his family i.e. his daughter and the respondent made a false complaint. In fact, already he gave a complaint with the very same set of facts before the Palladam Police Station against the petitioners; it was duly enquired and closed. Thereafter, another complaint was lodged for the same set of allegations before the R.S.Puram Police Station and the same was also closed after due enquiry. Thereafter, he filed this frivolous complaint and the learned Magistrate has not followed the procedures contemplated under Section 200 of Cr.P.C without examining the witnesses straight away taken cognizance and there is no any materials to show that the jewels pledged by the petitioners are belonged to the complainant and no specific mention about the particulars of the jewels and the allegations are vague, bald, general and omnibus allegations. Therefore, without any materials, the learned Magistrate has taken cognizance against the petitioners and therefore, the pending proceedings are liable to be quashed.

4. The learned counsel appearing for the petitioners, in support of



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his contention, has relied upon the following judgments:-

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(i) State of Haryana Vs. Bajanlal reported in 1992 AIR 604

(ii) Priyanka Srivastava and another Vs. State of U.P. reported in 2015 (6) SCC 287

5. The learned counsel appearing for the respondent would contend that the petitioners in both the petitions have cheated the complainant. In fact, the complainant wanted to pledge his jewels since his father-in-law was in need of money for a tune of Rs.15,00,000/-. At that time, the 1st accused, who is none other than the brother of the complainant informed that in private finance, the rate of interest is too high, and in Canara Bank, the rate of interest is only 9%. Therefore, believing the words of the 1st accused, the complainant pledged the jewels in the name of the complainant, his wife, his brother (A1), his brother's wife (A2) and his brother's in-laws (A3 and A4). Thereafter, he paid the amounts through his brother a sum of Rs.1,20,000/-, but the jewels were not redeemed. When he questioned about the same, his brother (A1) represented that the jewels were sold by the Bank through



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auction due to default in payment. Thereafter, on verification, the complainant came to know that the jewels were not brought for auction and the accused only redeemed the jewels. Therefore, all the accused conspired together and cheated the complainant.

5.1. Moreover, on 06.10.2020, all the accused waylaid the respondent and his wife and threatened with dire consequences, and refused to return back either jewels or the value of money for the jewels. Therefore, he lodged the complaint before the police and the police have not taken any action and thereby, he filed the complaint under Section 156(3) of Cr.P.C before the learned Judicial Magistrate – I, Coimbatore. The learned Magistrate, after satisfied the *prima facie* of the case and materials available to constitute the offences for taking cognizance case has been taken on file and thereby, the petitioners have to face the trial and now, the petitions are liable to be dismissed.

6. This Court heard both sides and perused the materials available on record.



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7. The respondent herein has preferred a complaint before the learned Judicial Magistrate-I, Coimbatore alleging that he entrusted the jewels to the petitioners for pledging in the Bank and thereafter, they failed to return the jewels and also threatened with dire consequences. Based on the complaint, the learned Magistrate has taken cognizance for the offences under Section 294(b), 120(b), 420 and 506(1) of IPC as against the accused. According to the petitioners, the jewels belong to them and the complainant had lodged a false complaint. Already the same complainant had lodged a complaint before the Palladam Police Station, the same was duly enquired and closed. Again, a complaint was lodged before the R.S.Puram Police Station and the same was also closed after enquiry. Thereafter, he presented this complaint.

8. This Court also perused the entire material available on records. In the complaint, the complainant stated that on 31.08.2016, he entrusted the jewels to the petitioners for pledging in the Bank. Thereafter, the complainant approached the petitioners to redeem the jewels, and they represented that the jewels were sold through auction by the Bank. Later,



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he came to know that the Bank has not conducted any auctions and the petitioners only redeemed the jewels and made false representations. Thereafter, the panchayat was convened, wherein the petitioners agreed to return the jewels and thereafter, all the petitioners waylaid the complainant and threatened with dire consequences. These are all the allegations.

9. As far as the allegations are concerned, there was no specific allegation that how much quantity of jewels were given to each accused and what are the types ornaments given to each accused. Vaguely, the complainant has stated that he gave jewels to all the accused for pledging and thereafter, they have not redeemed the jewels. Even according to the complaint, there is no whisper about for what amount each accused pledged the jewels and what is the quantity pledged by each accused. The complainant also did not produce any receipts in the name of 2 to 4 accused and only produced the receipts in the name of complainant, his wife and 1st accused that too for dated 30.08.2016. Those receipts were also not whispering about the quantity and nature and type of jewels.



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10. As far as Section 420 IPC is concerned, there is no ingredient to constitute the offence and there is no evidence that the accused deceived the defacto complainant fraudulently or dishonestly induced him to deliver any property and to consent to retain any property or intentionally induced him to deliver any property. The allegations are vague, bald, general and omnibus allegations.

11. As far as the offences under Sections 294(b), 120(B) and 506 (1) of I.P.C are concerned, there is no ingredients to constitute the said offence. Even as per the complaint given by the complainant, there are omnibus and bald allegations that all the accused waylaid him and uttered obscene words and caused criminal intimidation. It is well settled law that based on the vague and bald allegations, the petitioners cannot face the trial. Moreover in the complaint, complainant has not furnished the list of witnesses and the petition filed by the respondent under Section 156(3) has been simply converted into private complaint. Further, there is no affidavit filed by the complainant before the trial Court. In order to make out *prima facie* to constitute the offence under



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Sections 294(b), 420 and 506(1) of IPC, there are no materials.

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12. The learned Magistrate without perusing entire materials, based on the vague, bald and omnibus allegations and without any materials and without following the procedure under Section 200 of Cr.P.C., had taken cognizance and thereby, the proceedings pending against the petitioners are liable to be quashed.

13. In this context, the learned counsel for the petitioners also relied upon the judgments of the Hon'ble Supreme Court in ***State of Haryana Vs. Bajanlal [1992 AIR 604]*** and ***Priyanka Srivastava and another Vs. State of U.P. [2015 (6) SCC 287]***. On a careful perusal of the judgment, it is clear that the Court cannot take recourse to Section 156(3) Cr.P.C., as if, it is a routine procedure, where the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused, where the uncontroverted allegations made in the FIR or complaint and the evidence collected in



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support of the same do not disclose the commission of any offence and make out a case against the accused and where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused, this Court can exercise the power under Section 482 of Cr.P.C in order to prevent abuse of process of any Court or otherwise to secure the ends of justice. In the case on hand also no materials available to constitute the offence which the learned Magistrate has taken cognizance and the procedures under Section 200 Cr.P.C have not been followed.

14. Therefore, as discussed supra, this Court is of the opinion that there are no materials as against the petitioners to proceed with the case and no *prima facie* materials available to constitute offence under Sections 294(b), 120(b), 420 and 506(1) of IPC and thereby, the pending proceedings in C.C.No.1531 of 2021 are abuse of process of law and the same is liable to be quashed.



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15. In the result, these Criminal Original Petitions are allowed and the pending proceedings in CC.No.1531 of 2021 on the file of the learned Judicial Magistrate – I, Coimbatore are quashed. No costs. Consequently, connected Criminal Miscellaneous Petitions are closed.

25.11.2024

index: Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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P.DHANABAL,J

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To

- 1.The Judicial Magistrate No.1, Coimbatore
- 2.The Public Prosecutor, High Court, Madras.

Pre-Delivery Judgment made in
Crl.O.P.Nos.23440 and 2854 of 2022
and Crl.M.P.Nos.1298, 1299 and 14954 of 2022

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