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Crl.O.P.(MD).No.2140 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	13.12.2023
Pronounced On	12.03.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.O.P.(MD).No.2140 of 2019

and

Crl.M.P.(MD).Nos.1132 & 1133 of 2019

1.Jansi Rani

2.Kamala

... Petitioners

Vs.

1. The State represented by
The Inspector of Police,
Boiler Plant Police Station,
Trichy
(Crime No.118 of 2017)

2.M.Murugaiya

... Resondents

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records relating to the case in C.C.No.251 of 2018, on the file of the learned Judicial Magistrate Court No.IV, Trichy and quash the same.



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For Petitioner : Mr.M.Kannan

For Respondents : Mr.P.Kottaichamy
Government Advocate (Criminal Side)
for R1

: Mr.G.Anto Prince for R2

ORDER

The petitioners are the accused in C.C.No.251 of 2018, and they have filed this petition to quash the proceedings against them, on the basis of the crime No.118 of 2017, investigated by the first respondent police, on the basis of the complaint given by the second respondent.

2. The first respondent police registered a case in Crime No.118 of 2017, against the petitioners on the basis of the complaint given by the second respondent. The second respondent married the first petitioner as his second wife. The second petitioner is the mother of the first petitioner. The second respondent retired from his service on 23.04.2016 as a General Manager of the Trichy BHEL Corporation. He obtained the retirement benefit of Rs.31,98,000/-. The first petitioner as a wife of the second respondent received a sum of Rs.15,00,000/- from the second respondent, upon making a false promise that higher interest would be given by by making deposit in second petitioner's account. The first petitioner made a promise



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to the defacto complainant/second respondent that if the amount was deposited in

the name of the second respondent in the senior citizen's account, it would generate more interest and hence, she received the amount and deposited in her name. Thereafter, she did not repay the interest. In the meantime, there is a dispute between the first petitioner and the second respondent. The first petitioner filed the divorce original petition before the jurisdictional Court and he demanded the amount of Rs.15,00,000/- but the same was not repaid by the petitioner. Therefore, he made a complaint before the first respondent police and the same was registered in Crime No.118 of 2017 for the alleged offences punishable under Sections 406 and 420 of IPC. The same was investigated by the investigating officer and the final report was filed. It was taken on file in C.C.No.251 of 2018, by the Judicial Magistrate No-VI, Tiruchirappalli. To quash the proceedings, the present quash petition has been filed by the petitioners.

3. The learned counsel for the petitioner submitted that by taking the entire allegation made in the FIR and in the final report no criminality is found place. Even as per the allegation, the amount was received to deposit in the name of the second petitioner. It is also admitted that the same was deposited and the interest was paid for some time. Hence, this is a purely money transaction and the criminal colour was given to the civil dispute. The learned counsel for the petitioner further submitted that there was a dispute between the first petitioner and the defacto



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complainant. Hence, there was a exchange of legal notice and finally, the divorce

petition was filed by the second respondent. In the meantime, the second respondent withdrew the amount deposited in the name of the first petitioner by forging her signature. Therefore, she made a complaint to the jurisdictional police to take action against him for withdrawal of the amount by forging her signature and the same was registered in Crime No.19 of 2017 dated 20.07.2017. As a counter blast the present complaint was made with malafide intention. The learned counsel for the petitioners submitted that in the petition in H.M.O.P.No.169 of 2017 and in the legal notice it is stated that the petitioner obtained the loan of Rs.15,00,000/- from him. Hence, the allegation that they obtained the amount to deposit in the name of the second respondent with an intention to generate more interest is not correct and the same is false one. He seeks for quashing of FIR and he relied on the following judgments of the Hon'ble Supreme Court:

- (i). Uma Shankar Gopalika v. State of Bihar, reported in (2005) 10 SCC 336
- (ii) 2013 6 SCC 470
- (iii). B. Suresh Yadav v. Sharifa Bee, reported in (2007) 13 SCC 107
- (iv). Rashmi Jain v. State of U.P., reported in (2014) 13 SCC 553
- (v). V.Y. Jose v. State of Gujarat, reported in (2009) 3 SCC 78

4. The learned counsel for the second respondent/defacto complainant submitted that there is no bar to initiate the criminal proceedings in the case of



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cheating committed by the petitioners. In this case, there is a clear misrepresentation

at the inception on the part of the first petitioner to receive the amount of Rs. 15,00,000/- in order to deposit in the name of the second petitioner, so as to generate higher interest from the in the status of senior citizen account. Therefore, the criminal offence is made out. He also submitted that the allegation in Crime No. 19 of 2017 is not proved and the same is false. The amount was taken by the petitioners and the second respondent is a nominee of the first petitioner. Further, he also relied the following judgments of the Hon'ble Supreme Court:

(I).R.K. Vijayasathya v. Sudha Seetharam, reported in (2019) 16 SCC 739

(ii).Archana Rana v. State of U.P., reported in (2021) 3 SCC 751

(iii).Mitesh Kumar J. Sha v. State of Karnataka, reported in (2022) 14 SCC 572 (Live Law 2021 SC 592)

(iv). Priti Saraf v. State (NCT of Delhi), reported in (2021) 16 SCC 142

(v) 1999 8 SCC 686,

(vi). Dhruvaram Murlidhar Sonar v. State of Maharashtra, reported in (2019) 18 SCC 191

(vii). CBI v. Arvind Khanna, reported in (2019) 10 SCC 686

(viii). State of Telangana v. Managipet, reported in (2019) 19 SCC 87

Based on the above judgment of the Hon'ble Supreme Court, he seeks for dismissal of the quash petition on the ground that the defence of the petitioner cannot be



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looked into and no case has been made out by the petitioner to invoke the jurisdiction under Section 482 of Cr.P.C.

5. The learned Public Prosecutor also reiterated the said argument of the defacto complainant namely the second respondent herein and stated that now the investigating agency found that there is a criminality in the transaction and also filed the final report under Section 409 and 420 of IPC. Therefore, he seeks for dismissal of this petition.

6. This Court considered the rival submission and also perused the materials available on records and also the precedents relied upon by them.

7. The investigating officer filed the following final report:

சாட்சி-1 முருகையாதிருச்சிபெல் நிறுவனத்தில்
பொதுமேலாளராகபணிபுரிந்து 23.04.2016 ந்தேதி
ஓய்வு பெற்றுள்ளார். சாட்சி-1 முருகையா, 1வது எதிரி
ஜான்சிராணியை 2-வது திருமணம் செய்துள்ளார். வாதி
முருகையாவுக்கு ஓய்வூதியபலனாக 4.5.16ந்தேதி ரூ.20,99,000/-
ம், 12.5.16 ந்தேதி ரூ.10,99,000/- கிடைத்துள்ளது. 2-வது
எதிரி கமலா சீனியர் சிட்டிசன் என்பதால் கமலா பெயரில்
மேற்படி பணத்தை டெபாஸிட் செய்தால் அதிகவட்டி
கிடைக்கும் என்று 1-வது எதிரி ஜான்சிராணி, 2-வது
எதிரிகமலாவும் சாட்சி-1 முருகையாவிடம் ஆசை
வார்த்தைகள் கூறியுள்ளனர். சாட்சி-1 முருகையா அவர்களது
ஆசை வார்த்தைகளை நம்பி 17.5.16 ந்தேதி ரூ.15,00,000/-



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லட்சத்தை கைலாசபுரம் SBI வங்கியிலுள்ள தனதுA/C No. 10891436989- லிருந்து 1, 2-வது எதிரிகளின் மதுரை அரசாடி SBI வங்கி கணக்கு எண்.10169780084 கணக்கிற்கு வாதி அனுப்பியுள்ளார். பிறகு கமலா பெயரிலுள்ள அதே வங்கி கிளையில் கணக்கு எண்.35782027353- என்ற கணக்கிற்கு ரூ.15,00,000/- த்தை மாற்றி பிறகு அதே வங்கியிலுள்ள கமலா பெயரிலுள்ள A/C No.35782316141-என்ற கணக்கிற்கு ரூ.15,00,000/- மாற்றியுள்ளார். மேற்படி டெபாஸிட் பணத்திற்கு 01-07-16-ந்தேதி ரூ.13,000/- ம் முதல் காலாண்டிற்கும் 31-12-16-ந் தேதி ரூ.28,000/-ம் முன்றாவது காலாண்டிற்கு வட்டியாக வாதி முரகையாவிற்கு அனுப்பியுள்ளார். அதன்பிறகு சாட்சி-1க்கும், 1-வது எதிரிக்கும் கருத்து வேறுபாடு ஏற்பட்டு பிரிந்து விவாகரத்து வழக்கு திருச்சி சப் கோர்ட்டில் நிலுவையில் உள்ளது. அதனால் தற்பொழுது சாட்சி-1 தன்னுடைய பணத்தை திருப்பி தருமாறு எதிரிகளிடம் கேட்டதற்கு தரமுடியாது என்று கூறி மேற்படி ரூ.15,00,000/-ம் எதிரிகள் Fore closure செய்து சாட்சி-1க்கு தெரியாமல் எடுத்துசாட்சி-க்குதராமல் மோசடிசெய்துள்ளார். எனவே எதிரிகளின் இச்செய்கை இ.த.ச.பிரிவு 406, 420 - ன்படிதண்டனைக்குரியசெயலாகும்.

From the reading of above final report, it is clear that the second respondent married the first petitioner as his second wife. He retired from Trichy BHELCompany on 23.04.2016. He received the retirement benefit of Rs.31,98,000/- and the same was obtained by the first petitioner in order to deposit the same in the name of the second petitioner so as to generate more interest in the status of senior citizen. After depositing the same, she paid the interest for two installments. Subsequently, she



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refused to pay the interest and also repay the amount of Rs.15,00,000/-. From the

above averments, it is clear that there is a money transaction between the husband and wife. Further in the reply notice and the petition in H.M.O.P.169 of 2017, the second respondent stated that he granted a loan of Rs.15,00,000/- to the first petitioner. The said averment is as follows:

Averment in the H.M.O.P.Petition	Averment in the legal notice
The petitioner has provided a loan of Rs. 15,00,000/- on 17.05.2016 believing that all the disputes will come to end if the petitioner provided loan to the mother of the respondent but the respondent is harassing more after the loan has been provided to the mother of the respondent	My client states that the second of you was insisting to give a loan to the first of you and my client be made as a nominee for the Bank account, along with full rights to operate the account through net banking My client states that in order to satisfy and as insisted by the second of you to provide loan to the first of you, my client had electronic transfer on 17th May 2016, to SBI bank account No.10169780084 held by the first of you at Madurai.

8. Considering the relationship and also the nature of transaction as stated above, the continuation of the criminal proceeding as against the petitioner is illegal and hence, this Court is inclined to quash the petition. This Court also finds that the elements of the ingredients of Sections 406 and 420 of IPC are not available in this case. It is settled law that in the case of failure to repay the amount, it is open to the defacto complainant to file a suit for recovery of amount in the manner known to law. Further in this case, there was no entrustment even as per the averment in the legal notice and the H.M.O.P.No.169 of 2017. He handed over a sum of Rs.



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15,00,000/- as a loan. In the said circumstances, his remedy is only to file civil suit.

Without filing the civil suit, he filed this criminal complaint and the same was erroneously entertained by the jurisdictional police officer and culminated into final report and the same was taken on file in C.C.No.251 of 2018. Hence, the entire process of registration of case that culminated into C.C.No.251 of 2018 requires to be quashed. Therefore, this Court is inclined to quash the proceeding. Both the parties relied on a number of judgment of the Hon'ble Supreme Court and this Court is of the considered opinion that the judgments relied by the petitioner is not applicable to the present case.

9. From the above fact, it is clear that the dispute between the parties is purely a money transaction and hence, the initiation of the criminal proceedings is abuse of process of law and hence, this Court is inclined to quash the proceedings.

10. Accordingly, this Criminal Original Petition stands allowed. Consequently, connected criminal miscellaneous petitions are closed.

12.03.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
sbm

To

1. The learned Judicial Magistrate Court No.VI,
Trichy.



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- 2.The Inspector of Police,
Boiler Plant Police Station,
Trichy.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
4. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

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