

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.10.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Crl.Revision Case No.1056 of 2009
and
M.P.Nos.1 and 2 of 2009

Ramalingam

... Petitioner

Vs

The State rep.by
Inspector of Police
Cuddalore District.

... Respondent

Criminal Revision Case filed under Sections 397 read with Sec. 401 of Cr.P.C. against the order dated 24.09.2009 passed by the learned Judicial Magistrate No.III, Cuddalore in Crl.M.P.No.1133 of 2008 in C.C.No.132 of 2008.

For Petitioner : Mr.S.Y.Masood

For Respondent : Mr.V.Arul
Government Advocate (Crl.side)

Mr.Ilanthiraiyan for
M/s.Sai, Bharath and Ilan
for Defacto Complainant

ORDER

This revision is filed as against the order of dismissal dated 24.09.2009 passed by the learned Judicial Magistrate No.III, Cuddalore in Crl.M.P.No.1133 of 2008 in C.C.No.132 of 2008 in dismissing the petition filed under Section 468 Cr.P.C seeking to discharge him from the alleged offence.

2. The brief facts of the case is as follows:

A case has been registered against the petitioner/accused for the alleged offence under Sections 384, 385, 420 IPC and under Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act in Crime No.382 of 2007. A referred charge sheet was filed by the respondent police and the same was returned by

the Court below for taking further action. Thereafter, the case was transferred to District Crime Branch for further investigation and after completing the investigation, charge sheet was laid under Section 420 of IPC r/w Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act and the same was taken cognizance by the Court. In the mean time, the petitioner filed a petition under Section 468 of Cr.P.C., seeking to discharge him from the alleged offence. However, the same was dismissed by the Court below by holding that prima facie case was made out under Section 420 of IPC r/w Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act and hence, the petition has no merits to discharge the petitioner from the alleged offence. Aggrieved over the same, the present revision has been filed.

3. Learned counsel for the petitioner would submit that the very complaint itself is belated. Even as per the complaint, the petitioner is alleged to have involved in the money transaction with the defacto complainant during the period 1994-99. According to the petitioner, the blank cheques, pro-notes and other documents which were given by the complainant towards the security for the loan obtained by him were not returned only due to the unnatural death of his daughter-in-law since it was kept in some other place. As the same were not returned, the complainant for the first time gave a complaint on 05.08.2007 and based on this, the FIR was filed. Thereafter, the matter was closed and the action against the petitioner was dropped. Once again, the complainant has preferred a complaint before the Superintendent of Police alleging that the petitioner has collected the exorbitant interest for the loan availed by the complainant. On that basis, the Superintendent of Police, without even issuing notice to the petitioner, straightaway ordered further investigation and a referred charge sheet also came to be filed. Thereafter, the case was transferred to District Crime Branch for further investigation, which re-investigated the matter and filed the charge sheet before the Court for the alleged offence under Section 420 of IPC r/w Section 4 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act. Challenging the same, the petitioner originally filed petition under Section 468 of Cr.P.C.; subsequently, he filed another petition to modify the said petition into one under Section 239 of Cr.P.C., seeking to discharge him from the offences alleged; however the same was dismissed by the Court below without considering the facts and circumstances of the case.

4. Learned counsel for the petitioner would further submit that the legal notice issued by the complainant is only for the return of 12 blank cheque leaves and 12 pro-notes given by him as a security for the loan availed by him. It is the further

contention of the petitioner that no dates also have been mentioned in the complaint between the period from 1994-99 for receiving the loan as well as its repayment. Accordingly, he would submit that the very complaint given itself is wrong and the further investigation conducted by the District Crime Branch is also not correct. Therefore, he would pray for setting aside the order passed by the Court below and to discharge him from the alleged offence.

4. Learned counsel for the defacto complainant would mainly contend that as even as per the statements recorded under 161 Cr.P.C., from various witnesses, it is proved that the petitioner is a Financier, who is lending money to the parties, charging exorbitant interest. He would further submit only to avoid giving back the blank cheques and pro-notes retained with him, which was later seized from the petitioner during the course of investigation and in order to misuse the same, the petitioner has filed the petition before the Court below to discharge him from the alleged offence. However, the Court below after considering the entire facts and circumstances of the case, dismissed the said petition, warranting no interference in this revision.

5. Learned Government Advocate (Criminal side) would contend that no doubt all these pro-notes have become time barred because the alleged blank cheques and pro-notes are issued during the year 1994 to 1999 and the same are kept in the Court custody during the further investigation conducted by the District Crime Branch. Accordingly, he would submit that nothing survives further in the matter as both the petitioner as well as the defacto complainant are safe-guarded. Therefore, prays for the dismissal of the revision.

6. Heard all the parties.

7. At the outset, it is an undisputed fact that the very complaint relates to the blank cheques and pro-notes, which were issued by the defacto complainant during the money transaction he had with the petitioner herein during the years 1994-99. Since the cheques and pro-notes are issued with a specified time limit, the same loses its value, after a period of nearly 20 years now. Further, as per the contention of the learned Government Advocate (Criminal side), the alleged cheques and pro-notes are in the custody of the Court and not with the petitioner. Excepting that the petitioner is charging exorbitant interest by doing finance business, there is no other complaint as against him as on that date; though in the 161 statement, several persons have stated that the petitioner is charging exorbitant interest for the money lent by him, in the first report filed by the prosecution, the same was closed

as mistake of fact. Subsequently, based on the direction issued by the Superintendent of Police further investigation was conducted and the first information report has been filed. Further, a reading of the 162 statements recorded by the police does not specifically say that the petitioner has demanded exorbitant interest as per the complaint given. It only states that the petitioner has not returned back the blank cheques and pro-notes given by the complainant as security for the amount borrowed by him. Further, the prosecution has also not properly explained the inordinate delay of seven years in filing the First Information Report after receiving the complaint.

8. In this regard, I would like to extract hereunder the the relevant portions from the following decisions of the Hon'ble Supreme Court:

(i) (2008) 15 SCC 590 [Arumugam vs. State rep.by Inspector of Police, Tamil Nadu],

"30. Time and again, the object and importance of prompt lodging of the first information report has been highlighted. Delay in lodging the first information report, more often than not, results in embellishment and exaggeration, which is a creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of a coloured version, an exaggerated account of the incident or a concocted story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity. Therefore, it is essential that the delay in lodging the report should be satisfactorily explained.

31. In the present case, as noted supra, the first information report in regard to the alleged occurrence on 19.04.1996 was lodged on 22.05.1996. Admittedly, after the discharge from the hospital on 22.04.1996, the complainant went to her parents' house and resided there. In her testimony, the complainant has deposed that since no one from the family of the accused came to enquire about her welfare, she decided to lodge the first information report. No explanation worth the name for delay in filing the complaint with the police has come on record. We are of the opinion that this circumstance raises considerable doubt regarding the genuineness of the complaint and the veracity of the evidence of the complainant (PW1) and her father (PW3), rendering it unsafe to base the conviction of the respondent upon it. Resultantly, when the substratum of the evidence given by the complainant (PW1) is found to be unreliable, the prosecution case has to be rejected in its entirety".

(ii) (2010) 8 SCC 775 [Kishan Singh (dead) through LRs. vs. Gurpal Singh and others]

"21. Prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of its version. In case, there is some delay in filing the FIR, the complainant must give explanation for the same. Undoubtedly, delay in lodging the FIR does not make the complainant's case improbable when such delay is properly explained. However, deliberate delay in lodging the complaint is always fatal. [vide Sahib Singh vs. State of Haryana reported in (1997) 7 SCC 231].

22. In cases where there is a delay in lodging an FIR, the court has to look for a plausible explanation for such delay. In the absence of such an explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an afterthought or had given a coloured version of events. In such cases the court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the civil court may initiate criminal proceedings just to harass the other side with mala fide intentions or the ulterior motive of wreaking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case."

9. Keeping the aforesaid proposition laid down by the Hon'ble Apex Court, if we analyse the case on hand, it will clearly indicate that the occurrence pertains to the year 1994-1999 and the First Information Report has been filed only on 10.08.2007, that too beyond a period of more than seven years and that such an inordinate delay has not been properly explained by the prosecution. On this sole ground alone the

charges alleged against the petitioner is liable to be quashed and the Court below should have discharged the petitioner from the alleged offence by allowing the petition filed by him. However, the same was dismissed. Further, in this case during the course of investigation, all the alleged documents were seized from the petitioner and had been kept in the Court custody, which are also time barred.

10. For the above stated reasons, this Criminal Revision case is allowed and the petitioner is discharged from the alleged offence under Section 420 of IPC r/w Section 4 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act. At the same time, it is also made very clear that the Court below shall destroy all the blank pro-notes, cheques and the receipts, which are seized from the petitioner pertaining to the defacto complainant, in the presence of the Magistrate concerned and it shall not be returned to anyone, which will safe-guard both the petitioner as well as the defacto complainant.

11. With the above direction, this Criminal Revision Case is allowed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vj2

To

1. The Judicial Magistrate No.III,
Cuddalore
2. Do- Through The Chief Judicial Magistrate,
Cuddalore.
3. The Public Prosecutor,
Madras

+lcc to Mr.S.Y.Masood, Advocate, S.R.No.56928
+lcc to M/s.Sai, Bharath and Ilan, Advocate, S.R.No.57216

Cr1.R.C.No.1056 of 2009

KK(CO)
CA(09/12/2015)