

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2016

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THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP No.26973 of 2015
and M.P.No.1 of 2015

1.Pattabiram
2.Subramaniyam

.. Petitioners

Vs

1.The State rep by its
Inspector of Police
Tharapuram Police Station
Tiruppur District
Crime No.492 of 2014.

2.Palaniammal

.. Respondents

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records and quash the proceedings in C.C.No.214 of 2015 on the file of Judicial Magistrate, Tharapuram, Tiruppur.

For Petitioner	:	Mr.S.Sugendran
For R1	:	Mr.C.Emalias
		Addl.Public Prosecutor
For R2	:	Mr.N.Ponraj

ORDER

This petition has been filed to call for the records and quash the proceedings in C.C.No.214 of 2015 on the file of Judicial Magistrate, Tharapuram, Tiruppur.

2. Heard the learned counsel for the petitioners, the learned Additional Public Prosecutor appearing for the State and the learned counsel appearing for the de facto complainant.

3. On the complaint lodged by Palaniammal, the respondent police registered a case in Cr.No.492/2014 and after completing the investigation has filed a Final Report in C.C.No.214/2015 before the Judicial Magistrate, Dharapuram against the petitioners herein for offences u/s 4 of the Tamil Nadu Prevention of Charge of Exorbitant Interest Act, 2003 and 506(ii) IPC.

4. On a reading of the Final Report it is seen that the prosecution has alleged that the petitioners lent Rs.3,25,000/- to Palaniammal/*de facto* complainant and had obtained signature in certain blank papers and have been charging exorbitant interest to a tune of Rs.70 lakhs.

5. Learned counsel for the petitioners submitted that the second petitioner had filed O.S.No.2/2005 for specific performance of the contract, which suit was decreed on 28.01.2013 in his favour and therefore, the prosecution is an abuse of process of law.

6. This Court gave it anxious consideration to the submissions made by the learned counsel for the petitioners. It is seen that the second petitioner has obtained an *ex parte* decree in O.S.No.2/2005 and is not a contested one. That apart, in the Final Report it is clearly stated that on 24.02.2014, panchayat was held in the presence of the elders in the village, in which witnesses 3, 4 and 5 had participated and in that panchayat also the petitioners herein had demanded Rs.70 lakhs as interest for a loan of Rs.3,25,000/- [Rupees three lakhs twenty five

thousand only]. Thus, when there are sufficient materials for the prosecution to proceed, this is not a fit case to quash the prosecution in the light of the law laid down by the Supreme Court in **State of Haryana v. Bhajan Lal [AIR 1992 SC 604]**. Accordingly, this petition is dismissed. Consequently, connected miscellaneous petition is closed.

7. Learned counsel for the petitioners submitted that Pattabiram/A1 is aged about 81 years and his presence before the trial Court could be dispensed with. The first petitioner is directed to be present for receiving the charge sheet, for answering the charge, at the time of questioning under Section 313 Cr.P.C. and at the time of passing judgment. The first petitioner shall file an affidavit of undertaking before the trial Court that he will not dispute his identity and that his counsel will cross examine the prosecution witnesses on the day they are examined-in-chief and that he will not adopt dilatory tactics. On such undertaking, the trial Court shall dispense with the personal appearance of the first petitioner. If the first petitioner adopts any dilatory tactics, the trial Court can insist on his presence. Anything observed above shall not in any way prejudice the parties.

13.07.2016

gms

To

1. Inspector of Police, Tharapuram Police Station, Tiruppur District.

2. The Judicial Magistrate, Tharapuram, Tiruppur.

3. The Public Prosecutor, High Court, Madras.

P.N.PRAKASH, J.

gms

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