



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.04.2016

CORAM:

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. (MD) No.5612 of 2016

WEB COPY

N.Anbalagan

... Petitioner

vs.

1.N.Vallinayagam @ Ravi

2.The Inspector of Police
Kottar Police Station
Kottar, Kanyakumari District
(Crime No.1074 of 2003)

... Respondents

PRAYER: This petition is filed under Section 482 Cr.P.C., to call for the records relating to order passed by the learned Sessions Judge, Kanyakumari District in Crl.R.P.No.3 of 2008, dated 15.07.2015, confirming the order passed by the learned Judicial Magistrate No.II, Nagercoil, dated 14.09.2007, in Crl.M.P.No.10217 of 2005 in C.C.No.26 of 2005 and set aside the same and allow this criminal original petition.

For Petitioner : Mr.N.Dilip Kumar

For Respondents : Mrs.S.Prabha
G.A.(Crl.Side) for R2

ORDER

The petitioner has filed this criminal original petition, under Section 482 Cr.P.C., seeking set aside of the order, dated 15.07.2015, passed by the learned Sessions Judge, Kanyakumari District at Nagercoil, in Crl.R.P.No.3 of 2008, confirming the order, dated 14.09.2007, passed by the learned Judicial Magistrate No.II, Nagercoil, in Crl.M.P.No.10217 of 2005 in C.C.No.26 of 2005.

2. For the sake of convenience, the petitioner and the first respondent herein are referred to as "the *de facto* complainant" and "the accused" respectively in this Order.

3. It is the case of the *de facto* complainant that he is retired from Indian Airforce and the accused is a tailor by profession and also into money lending business. According to the *de facto* complainant, he had borrowed money from the accused between 03.07.2001 and 12.10.2001, to the tune of Rs.3,50,000/-, for which the accused had charged daily interest at the rate of Rs.500/- per lakh. Since the *de facto* complainant was unable to pay the interest demanded by the accused, an agreement appears to have been entered into between them sometimes in 2001 with respect of the property belongs to the *de facto* complainant's mother-in-law.

4. Whiles, the Tamil Nadu Assembly passed Tamil Nadu Prohibition of Charging Exorbitant Interest Ordinance Act, 2003, which came into force on 09.06.2003 and it was followed up with the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 (Tamil Nadu Act



38 / 2003), which came into force on 16.11.2003. In the meantime, the *de facto* complainant lodged a complaint before the respondent Police, on 10.08.2003, alleging that the accused is demanding exorbitant interest and is also intimidating him. On these allegations, the respondent Police registered a case, in Crime No.1074 of 2003, under Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Ordinance Act, 2003, against the accused and after completion of investigation they filed a final report, in C.C.No.226 of 2005, for the offences punishable under Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Ordinance Act, 2003 and Section 506(i) I.P.C. (3 counts), before the learned Judicial Magistrate No.II, Nagercoil.

5. The accused entered appearance before the learned Judicial Magistrate No.II, Nagercoil and filed a petition for discharge, in CrI.M.P.No.10217 of 2005, under Section 239 Cr.P.C., contending that the provisions of Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Ordinance Act, 2003 cannot be made applicable to the facts of the present case, because even according to the *de facto* complainant the loan was given between 03.07.2001 and 12.10.2001 and interest was charged since then.

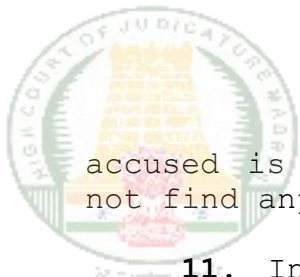
6. The learned Judicial Magistrate No.II, Nagercoil, after hearing both sides, by Order dated 14.09.2007, discharged the accused from the charge under Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Ordinance Act, 2003, but held that the accused should face the prosecution for the offence under Section 506(i) I.P.C. (3 counts).

7. Aggrieved by the Order, dated 14.09.2007, passed by the learned Judicial Magistrate No.II, Nagercoil, the accused filed a criminal revision petition, in CrI.R.P.No.3 of 2008, before the learned Sessions Judge, Kanyakumari at Nagercoil, and the same was dismissed on 15.07.2015.

8. Now, the *de facto* complainant is before this Court, under Section 482 Cr.P.C., contending that the orders passed by both the Courts below are illegal inasmuch as the provisions of Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Ordinance Act, 2003 are applicable and the accused ought not to have been discharged from the said charge.

9. Heard Mr.N.Dilip Kumar, learned counsel appearing for the petitioner and Mrs.S.Prabha, learned Government Advocate (Criminal Side) appearing for the second respondent.

10. On a close perusal of the facts narrated in the final report, it is seen that the transaction had taken place between 03.07.2001 and 12.10.2001 and that the Tamil Nadu Prohibition of Charging Exorbitant Interest Ordinance Act, 2003, came into force only on 09.06.2003, followed by the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 (Tamil Nadu Act 38 / 2003), which came into force on 16.11.2003. While the Ordinance Act was in force, the *de facto* complainant did not file a complaint, but in the complaint he has not stated that the accused had demanded exorbitant interest for the amount lent by him after 09.06.2003. He made only a general statement that the



accused is demanding exorbitant interest. Therefore, this Court does not find any infirmity in the Orders passed by both the Courts below.

11. In the result, this criminal original petition is devoid of merits and it is dismissed and the order, dated 15.07.2015, passed by the learned Sessions Judge, Kanyakumari District at Nagercoil, in Crl.R.P.No.3 of 2008, confirming the order, dated 14.09.2007, passed by the learned Judicial Magistrate No.II, Nagercoil, in Crl.M.P.No.10217 of 2005 in C.C.No.26 of 2005, is confirmed. Since the calender case is of the year 2005, the learned Judicial Magistrate No.II, Nagercoil, is directed to look into matter and dispose of the case as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this Order. If the accused does not co-operate to dispose of the case at an early date, it is open to the learned Trial Judge to cancel the bail granted to him and remand him to custody as per Section 309 Cr.P.C., and as per the dictum laid down by the Hon'ble Supreme Court in **State of U.P. v. Shambhu Nath Singh and others**, reported in **JT 2001 (4) SC 319**.

Sd/
Assistant Registrar(P&A)

/TRUE COPY/

Sub Assistant Registrar(C.S)
Madurai Bench of Madras High Court,
Madurai.

To

- 1.The Sessions Judge,
Kanyakumari District @ Nagercoil.
- 2.The Judicial Magistrate No.II,
Nagercoil.
- 3.The Inspector of Police,
Kottar Police Station,
Kottar, Kanyakumari District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.N.Dilipkumar, Advocate in SR.No.19089

Crl.O.P.(MD) No.5612 of 2016
04.04.2016

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