



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.12.2016

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THE HON'BLE MR.JUSTICE R.SUBBIAH

Crl.O.P. (MD) No.733 of 2011

and

M.P. (MD) .Nos.2 and 3 of 2011

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1.C.Marimuthu

2.M.Jegathambal

... Petitioners/

Accused Nos.1 and 2

-vs-

1.State rep. through

the Sub Inspector of Police,

Tallakulam Police Station (L & O),

Madurai.

(Crime No.3505 of 2010) ... 1st respondent/
Complainant

2.Sellam Amirtharaj

... 2nd Respondent/

Defacto complainant

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., praying to call for the records pertaining to the charge sheet in S.T.C.No.1706 of 2010, dated 30.11.2010, under Sections 341, 294(b) of IPC pending before the learned Judicial Magistrate No.II, Madurai, filed by the respondent No.1 in Crime No.3505 of 2010 dated 26.11.2010 on the file of the respondent No.1 and quash the same as illegal.

For Petitioners : Mr.T.Lajapathi Roy

For 1st respondent : Mrs.S.Prabha,
Government Advocate

For 2nd Respondent : No Appearance

O R D E R

This Criminal Original Petition has been filed seeking to quash the charge sheet filed for the offences under Sections 341 and 294(b) IPC in S.T.C.No.1706 of 2010, dated 30.11.2010, on the file of the learned Judicial Magistrate No.II, Madurai.

2.The petitioners are the accused Nos.1 and 2 before the trial Court. Based on the complaint lodged by the second respondent before the first respondent, a case was registered in Crime No.3505 of 2010 under Sections 294(b), 506(ii) and 341 IPC as against the petitioners. The allegation made in the complaint is that the second respondent/complainant and the petitioners/A1 and A2 are landlord and tenants respectively. Due to non payment of



rent, on 26.11.2010 at 09.00 a.m. the second respondent asked the second petitioner to vacate the property, but the second petitioner threatened her. While so, on the same day at 03.00 p.m. when the second respondent along with her daughter came to the Valluvar Colony Main Road, both the petitioners intercepted, abused in filthy language and threatened them with dire consequences. On completion of the investigation, a charge sheet has been filed before the trial Court and the same was taken on file in S.T.C.No.1706 of 2010. Seeking to quash the same, the petitioners/A1 and A2 have come up with this petition.

3. It is the submission of the learned counsel for the petitioners that the dispute between the petitioners and the second respondent is civil in nature and the same has been given a colour so as to attract a criminal case. He would further submit that the petitioners were residing in the second respondent's house from 04.02.2010 on rental basis. On 30.10.2010, the second respondent and the petitioners had entered into an oral lease agreement and based on the same, the petitioners gave a sum of Rs.2,30,000/- to the second respondent. Even after obtaining the same, the second respondent refused to execute the lease deed. When it was questioned by the petitioners, the second respondent threatened them and claimed a further sum of Rs.70,000/- for execution of the same and on their failure to pay the same, the second respondent threatened to disconnect the water and electricity connection to the portion of the petitioners. Even after repeated demand by the petitioners either to execute the lease deed or to repay the amount, the second respondent neither executed the lease deed nor returned the amount. Finally, the petitioners sent a legal notice to the second respondent on 24.11.2010 and demanded to execute the lease deed or to return the amount. After receiving the said legal notice, the second respondent lodged this false complaint only with the intention to take revenge against the petitioners. Thus, he sought for quashing of the charge sheet.

4. It is seen that notice has not been served to the second respondent. In view of the order to be passed in this petition, notice to the second respondent is dispensed with.

5. Heard the learned Government Advocate appearing for the first respondent on the submissions made by the learned counsel for the petitioners.

6. Keeping the submissions made by the learned counsel appearing for the petitioners and the learned Government Advocate appearing for the first respondent, I have carefully gone through the entire materials available on record.

<https://hcservices.ecourts.gov.in/hcservices/>

7. It is the main submission of the learned counsel for the petitioners that since the petitioners had issued a legal notice



to the second respondent, in order to wreck vengeance, the second respondent has given the false complaint. According to the prosecution, the allegations made in the complaint would *prima facie* constitute the commission of the offences under Sections 294 (b) and 341 IPC as against the petitioners.

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8. At this juncture, it is worthwhile to refer the decision of the Hon'ble Supreme Court reported in "**2013 Cri.L.J.1272 (Rajiv Thapar and others versus Madan Lal Kapoor)**", wherein, the Hon'ble Supreme Court has enumerated the steps required to be followed before invoking inherent jurisdiction by the High Court under Section 482 Cr.P.C., to determine the veracity of prayer made by an accused for quashment of the proceedings, as under:

"(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice? If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising there from) specially when, it is clear that the same would not conclude in the conviction of the accused."

9. In view of the above position of law and having regard to facts and circumstances of the case in hand, I am of the considered view that in this case, none of the steps, delineated by the Hon'ble Supreme Court in the above said decision, is satisfied and hence, the present Criminal Original Petition is liable to be dismissed.



10. Though the learned counsel for the petitioners vehemently argued that since the petitioners issued legal notice to the second respondent, in order to wreck vengeance, this false complaint has been given, I am of the considered opinion that even if civil remedy is available to the defacto complainant, it cannot be said that he is debarred from filing the complaint if the act of the accused *prima facie* establishes the criminal liability. No doubt it is true that only after issuance of legal notice by the petitioners, the second respondent has lodged the complaint. But, the question as to whether it is a false complaint or not, can be decided only after full trial, as this Court cannot conduct a roving enquiry in this matter.

11. In view of the above, this Criminal Original Petition is dismissed. However, it is open to the petitioners to file a petition for dispensing with their personal appearance. On such an application being filed by the petitioners / A1 and A2, the trial Court shall dispense with their personal appearance, except the date on which their appearance is required. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar[RTI]

/True copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate No.II,
Madurai.

2.The Sub Inspector of Police,
Tallakulam Police Station (L & O),
Madurai.

Cr1.O.P. (MD) No.733 of 2011
05.12.2016

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