



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.12.2017

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRL.O.P(MD)No.7828 of 2017 and
CRL.M.P.(MD)Nos.5343 & 9745 of 2017

1. Usha
2. Selvaraj

... Petitioners/A-1 & A-2

Vs.

1.The State represented by,
The Inspector of Police,
District Crime Branch,
Dindigul.
(Crime No.5 of 2017)

... 1st Respondent /Complainant

2. Raji

... 2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the First Information Report in Crime No.5 of 2017 on the file of the first respondent and to quash the same.

For Petitioners	: Mr.C.Jeganathan, for M/s.Veera Associates.
For R-1	: Mr.K.S.Durai Pandiyan, Additional Public Prosecutor.
For R-2	: Mr.M.Karthikeya Venkatachalapathy

O R D E R

This Criminal Original petition is filed for quashing the First Information Report in Crime No.5 of 2017 on the file of the first respondent.

2. Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the first respondent and the learned counsel appearing for the second respondent.



3. The petitioners are accused Nos.1 and 2 in Crime No.5 of 2017 on the file of the first respondent. On the basis of the complaint lodged by the second respondent, a case was registered in Crime No.5 of 2017 by the first respondent, for the alleged offences under Sections 406 and 420 of I.P.C.

4. In the complaint, the second respondent has stated that the accused have borrowed a sum of Rs.4,00,000/- after giving title deed in respect of the property belonged to the mother of the accused. It is further stated in the complaint that the second respondent subsequently gave the payment and then obtained the title deed which was offered to her as security for the loan transaction. It is further stated that the petitioners have not repaid even a single pie and that therefore, the petitioners have committed the offences under Sections 406 and 420 of I.P.C.

5. The learned counsel for the petitioners states that the second respondent originally filed a complaint on the same set of facts and the complaint was closed and that therefore, the second respondent filed a private complaint before the learned Judicial Magistrate, Palani and the same was taken on file by the learned Judicial Magistrate, Palani in C.C.No.451 of 2011. It is further stated that after the lapse of six years, the second respondent has lodged a complaint in relation to the same transaction alleging that the petitioners have committed the offences under Sections 406 and 420 of I.P.C. Since the second respondent has lodged the private complaint on the same set of allegations, it is contended that the second complaint on the same cause of action and in relation to the same transaction is not maintainable and that therefore, the complaint is liable to be quashed.

6. Having regard to the long delay and suppression of material facts and details in the complaint, it is further contended that there is no *bonafide* in the complaint and that it will be an abuse of process of law to allow the second respondent to pursue the second complaint. Further on the ground that the second respondent has an intention to harass the petitioners and that it is stated that the complaint which would clearly prove the *malafide* intention of the defacto complainant so as to furnish the image of the petitioners in the Department. Though there are various other grounds raised in the petition, this Court is convinced that the present complaint is nothing but a distorted version of the earlier private complaint that was lodged by the second respondent which is pending before the learned Judicial Magistrate, Palani in C.C.No.451 of 2011.

7. Sum and substance, the case of the second respondent in the private complaint is that the petitioners have borrowed a sum of Rs.4,00,000/- as against their house as security and that later



got back the document by promising to pay the sum which was given to them as loan. In the earlier complaint, it was alleged that a sum of Rs.2,10,000/- is due from the petitioners. The earlier complaint that was originally lodged before the learned Judicial Magistrate, Palani in the year 2010 and thereafter, the petition was filed before the learned Judicial Magistrate, Palani, to register the complaint in the year 2010. Hence, for the incident that happened in the year 2009 the earlier complaint was lodged, it can be seen that there was no transaction thereafter, as the defacto complainant has experienced the conduct and attitude of the petitioners. The present complaint which was filed nearly six years after private complaint, is unbelievable as the allegations are similar and it clearly indicates that the petitioners have borrowed an amount from the defacto complainant and failed to repay the same and thereby committed the offences under Sections 406 and 420 of I.P.C.

8. It is to be seen that the purpose and intention of the defacto complainant is to compel the petitioners to repay the money. The learned counsel for the petitioners also produced before this Court an order of suspension on the basis of the complaint that was pending pursuant to the registration of the complaint. It is in these circumstances, this Court find that the present complaint is nothing but the repetition of the same set of facts. This Court is inclined to entertain this petition.

9. Hence, the Criminal Original petition is allowed and the First Information Report in Crime No.5 of 2017 on the file of the first respondent is quashed in *toto*. However, the learned counsel for the second respondent submitted that a direction may be issued to the learned Judicial Magistrate, Palani, for early disposal of the proceedings in C.C.No.451 of 2011. Hence, in the interest of justice, the learned Judicial Magistrate, Palani, is directed to expedite the trial in C.C.No.451 of 2011 and to dispose of the same within a period of six months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate, Palani.

2. The Inspector of Police,
Dindigul.



3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 cc TO M/S.Veera Associates , Advocate in SR No. 93034
+ 1 cc TO Mr.M.Karthikeya Venkatachalapathy , Advocate in SR No.
92834

pmu

AE/SV MMS/SAR1/19.01.2018/4P/6C

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