



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.03.2017

CORAM:

THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

Crl.O.P. (MD) No.4827 of 2016

and

Crl.M.P (MD) Nos.2405 and 9453 of 2016

1.P.B.Chinnavenkata Raja

2.P.B.Jeyasubramanian

3.P.J.Balram

: Petitioners/A1 to A3

Vs.

1.The State represented through
The Inspector of Police,
Mannur Police Station,
Tirunelveli District.

: 1st respondent/Complainant

2.S.Dhinakaran

: 2nd Respondent/Defacto Complainant

Prayer: This petition is filed under Section 482 of Cr.P.C., to call for the records in pursuant to the FIR in Crime No.41 of 2016 on the file of the 1st respondent, dated 02.02.2016 and quash the same.

For Petitioners : Mr.V.Krishnamoorthy
for Mr.P.Athimoolapandian

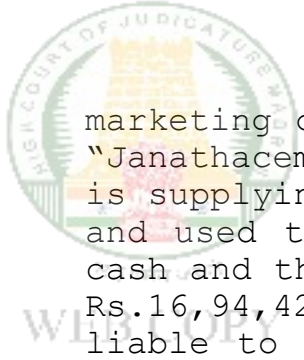
For 1st Respondent: Mr.A.P.Balasubramani
Government Advocate (Crl. Side)

For 2nd Respondent : Mr.N.Mohideen Basha

O R D E R

This petition is filed to call for the records in Crime No.41 of 2016 on the file of the 1st respondent, dated 02.02.2016 and quash the same.

2.According to the de-facto complainant, he is a Power Agent of M/s.Shyamala Agencies, Tirunelveli and supplying lime stone to M/s.Limenaph Chemicals (P) Ltd., Madhavakurichi, Mannur Taluk, Tirunelveli district, wherein the 1st petitioner/A1 is the a Director. The 1st petitioner during the business of production and



marketing of lime power used for wall coating in the name and style "Janathacem". It is his further case that the de-facto complainant is supplying lime stone to the 1st petitioner/A1 for the past 8 years and used to receive the payment for supply of limestone by way of cash and through bank and as on 22.06.2015, the total outstanding is Rs.16,94,428/- and besides this, the petitioner/A1 company is also liable to pay a sum of Rs.38,2067/- to its sister concern, namely M/s.S.R. Traders and since, the de-facto complainant demanded the outstanding, all the accused threatened the de-facto complainant with dire consequences. Hence, this complaint.

3.The learned counsel appearing for the petitioners would submit that there is no incriminating material available against the petitioners to frame the charges under Sections 406, 420, and 506 (ii) IPC and that the dispute between the petitioners and the 2nd respondent is a commercial transaction and that the 2nd respondent himself had admitted that he has received money for the goods supplied through the bank and cheques and hence, the offence under Sections 406 and 420 IPC are not attracted and that the offence under Section 506(ii) IPC was implicated only to take vengeance against the petitioners. In support of his contention, the learned counsel appearing for the petitioners has relied upon the following decisions:-

"1.1992 SCC (Cr1) 426 [State of Haryana and others Vs. Bhajan Lal and others];

2.2000-2-L.W.(Cr1.)646 [Dr.Subramanianswamy vs. The State rep. by the Inspector of Police, Town Police Station, Pudukkottai];

3.(2016)1 SCC (Cr1.) 746 [Anil Mahajan vs. Bhor Industries Ltd., and another];

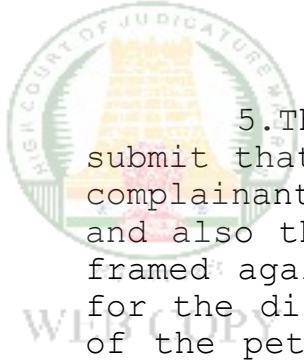
4.(2008)1 SCC (Cr1.) 259 [Inder Mohan Goswami and others vs. State of Uttaranchal and others];

5.(2009)1 SCC (Cr1.) 282 [B.Suresh Yadav vs. Shafia Bee and another];

6.2015 SAR (Criminal)116 Supreme Court [Binodkumar & others vs. State of Bihar and another];

7.Unreported judgment made in Cr1.R.C(MD) No.484 of 2015, dated 22.07.2016 [Kutty @ Jeyasubramaniya Raja vs. State represented by the Inspector of Police, Rajapalayam South Police Station, Rajapalayam].

4.The learned Government Advocate (Criminal side) appearing for the 1st respondent would submit that the respondent police, after considering the evidence, has rightly registered the FIR against the accused and, therefore, there is no question of quashing the FIR and prayed for the dismissal of the petition.



5. The learned counsel appearing for the 2nd respondent would submit that the petitioners have cheated the 2nd respondent/de-facto complainant and they have utilized the money for their own purpose and also threatened the de-facto complainant and hence, the charges framed against the petitioners are valid in law and hence, prayed for the dismissal of the petition and the ruling cited on the side of the petitioners are not applicable to the facts of the present case.

6. This court has carefully heard the submissions made on either side and perused the entire materials available on record.

7. On perusal of the FIR, it is revealed that there is a credit transaction between the parties for the past seven years and there was a contractual obligation between the parties and since, there is a civil dispute between the parties, IPC offences under sections 406 and 420 are not made out.

8. Further, on reading of the FIR, there was a clear statement given by the de-facto complainant that on 15.12.2016 about 11.00 am, the petitioners threatened to kill him and hence, there was a clear case of offence under section 506(i) IPC is made out against the accused. But the de-facto complainant in his statement has only stated that he has only implicated only against the 1st petitioner/A1 alone. In the complaint, the de-facto complainant has not stated that where the petitioners 2 and 3/A2 and A3 present at the time of the occurrence or they were also threatened him. Since there is no material available to presume that the petitioners 2 and 3/A2 and A3 threatened the de-facto complainant, the offence of 506(i) is not made out against the petitioners 2 and 3. Hence, this court is of the considered view that the offence under Section 506(i) IPC against the petitioners 2 and 3/ A2 and A3 is not made out.

9. In this case, the de-facto complainant himself has given a written complaint before the police station stating that he has not stated anything about the petitioners 2 and 3/A2 and A3 regarding the offence of 506(i) IPC and the subsequent statement given by the de-facto complainant before the police is only an afterthought. Hence, this court is of the considered view that charges under Sections 406 and 420 IPC is liable to be quashed against the petitioners and the charge under Section 506(i) IPC against the petitioners 2 and 3/A2 and A3 is liable to be quashed. Further, on reading of the entire materials, the charge under section 506(i) IPC against A1 alone survives.

10. Hence, this criminal original petition is **disposed of**, by quashing the charge in respect of Crime No.41 of 2016 against the petitioners under Sections 406, 420 and quash the charge against A2 and A3 under section 506(i) IPC. The respondent police is directed to investigate the charge under section 506(i) IPC as against the 1st petitioner/A1 alone in this crime number and complete the investigation and file a final report before the concerned court as



expeditiously as possible, preferably within a period of two weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed.

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Sd/-
Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

To

1. The Inspector of Police,
Mannur Police Station,
Tirunelveli District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.P.ATHIMOOLAPANDIAN, ADVOCATE IN SR No. 15779

ER

TE/SKN-RSK : 10/04/2017 : 4P/4C

Cr1.O.P.(MD)No.4827 of 2016 and
Cr1.M.P(MD)Nos.2405 and 9453 of 2016
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