

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2018

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CrI.O.P. No.13250 of 2012

and

M.P. No.1 of 2012

1.K.S.Ganesh Kumar

2. K.Samiyappan (deceased)

... Petitioners/A1 & A2

Vs.

1.State of Tamil Nadu

Represented by

Inspector of Police,
Central Crime Branch,
Tirupur.

(Crime No.40 of 2011
dt 22.11.2011)

... R1/Complainant

2.Mr.D.Kaniraj

...R2/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records in C.C. No.335 of 2012 on the file of the learned Judicial Magistrate No.II, Tirupur and quash the same as against the petitioners.

For Petitioners : Mr.G.R.Hari

For Respondent 1 : Mr.T.Shanmugarajeswaran,
Government Advocate (CrI.Side)

For Respondent 2 : Mr.V.S.Rajasekar

ORDER

The petitioners are arrayed as A1 and A2 in C.C. No.335 of 2012 on the file of the Judicial Magistrate No.II, Tirupur. The Inspector of Police, Crime Branch, Thriupur has filed a final report dated 15.02.2012 in C.C. No.335 of 2012 before the Judicial Magistrate No.II, Tirupur, against the present petitioners for the alleged offences punishable under Sections 406, 294 (b) and 506 (i) I.P.C. The learned Judicial Magistrate No.II, Tirupur took cognizance of the offence and issued summons to A1 and A2 on 20.04.2012.

2.The present petition has been filed by the petitioners/accused on the ground that the respondent police with mala fide intention has foisted a false case against the petitioners and that the petitioners have not committed the alleged offences punishable under Sections 406, 294(b) and 506 (i) of IPC.

3.Mr.G.R. Hari, learned counsel appearing for the petitioners would contend that the Inspector of Police, Tirupur Rural Police Station summoned the first petitioner herein on 05.08.2011 and coerced him to give a letter of undertaking that he would repay a sum of Rs.3,50,000/- to the de facto complainant based on which the present complaint dated 21.11.2011 was lodged with the Central Crime Branch, Tirupur by the de facto complainant with an allegation that the petitioners herein had committed the offences under Section 406, 294(b) and 506(i) I.P.C.

4.The specific contention of the learned counsel appearing for the petitioners is that the petitioners have been harassed by the respondent police and that they have not committed any of the offences mentioned in the final report. He therefore, prayed this Court to quash the entire proceedings pending before Judicial Magistrate No.II, Tirupur.

5. Per contra, the learned Government Advocate (Crl. Side) appearing for the respondent contended that the Inspector of Police Crime Branch based on a complaint preferred by the de facto complainant, investigated the case and filed a final report in C.C. No.335 of 2012 before Judicial Magistrate No.II, Tirupur and summons have also been issued. According to him, there are enough materials to proceed against the accused A1 and A2 (petitioners herein) and the learned Judicial Magistrate No.II, Tirupur was right in taking cognizance of offences and issuing summons to A1 and A2. His further contention is that since an order of stay was granted at the time of admitting the present petition, the case is kept pending without any progress in the trial Court.

6.At the outset, it may be observed that the petitioners who have averred that the respondent police harassed them and coerced them to give a letter of undertaking on 05.08.2011, have not lodged any complaint against the concerned police officials before their superior officers. They have not also filed any private complaint against the concerned police officer before a Judicial Magistrate under Section 200 Cr.P.C. Mere filing of a petition in Crl.O.P. No.21801 of 2011 for a direction to the respondent police not to harass them, cannot be sufficient to hold that the respondent police coerced them to

give a letter of undertaking for repayment of money. In any event, the present case has been filed for the alleged offences under Sections 406, 294(b) and 506(i) IPC.

7.A perusal of the final report and the statements of the witnesses recorded under Section 161(3) of Cr.P.C shows that there are enough prima facie materials against the petitioners herein to proceed further and the learned Judicial Magistrate No.II, Tirupur has rightly taken cognizance of the offence and issued summons to accused A1 and A2. The contention of the learned counsel for the petitioners that the de facto complainant had given a false complaint and that the respondent police had falsely foisted the case against the petitioners cannot be accepted at this stage. Whether the complainant has given a false complaint and whether the offences punishable under Sections 406, 294(b) and 506(i) of IPC had not been committed by the accused can be gone into only after the conclusion of trial. The petitioners have not also adduced sufficient materials to quash the criminal proceedings pending before Judicial Magistrate No.II, Tirupur.

8.Therefore, I do not find any reason to allow this petition. At this stage, learned counsel for the petitioners would contend that the second petitioner died on 02.06.2014. The prosecution is directed to file a death extract of A2 (second petitioner herein) before the Judicial Magistrate No.II, Tirupur for further course of action. Thereafter, the learned Judicial Magistrate No.II, Tirupur is directed to proceed against the first accused and complete the trial within a period of six months from the date of receipt of a copy of this order.

9. In the result, this petition is dismissed. Consequently, connected miscellaneous petition is also dismissed.

सत्यमेव जयते
Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rkp

To

1. The Inspector of Police,
Central Crime Branch,
Tirupur.

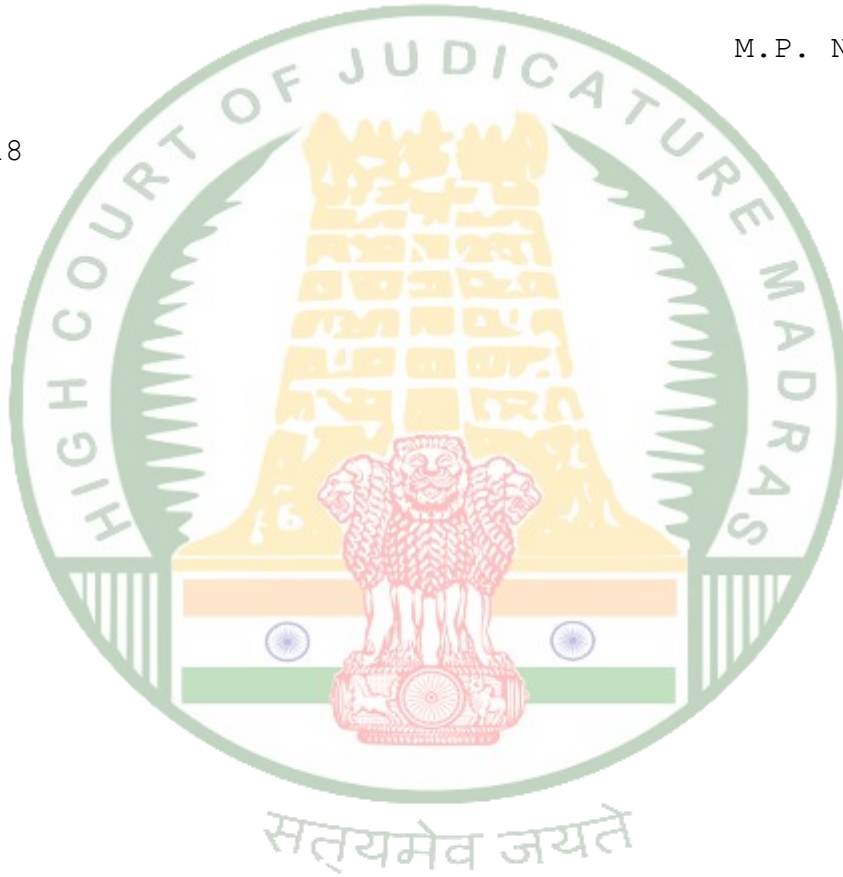
2.The Judicial Magistrate No.II,
Tirupur.

3. The Public Prosecutor,
Madras High Court,
Madras.

+2ccs to M/S.Ram & Ram, Advocate, S.R.No.35614

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CS/20/06/18



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