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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.08.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRL.O.P. (MD)No.10364 of 2011 and

M.P.(MD)Nos.1 & 2 of 2011

1. Rajagopal

2. R.Santha

... Petitioners/Accused Nos.1 & 2

Vs.

1. The State represented by,
The Inspector of Police,
City Crime Branch,
Tirunelveli.

(Crime No.47 of 2007)

... 1st Respondent/Complainant

2. Janarathana Reddy

... 2nd Respondent/

Defacto Complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C., to call for the records relating to the Charge Sheet in C.C. No.184 of 2011 pending on the file of the Judicial Magistrate Court No.I, Tirunelveli and quash the same as illegal.

For Petitioners : Mr.M.Ajmal Khan, Senior Counsel,
for M/s.Ajmal Associates.

For R-1 : Mr.A.Robinson,
Government Advocate(Crl. Side)

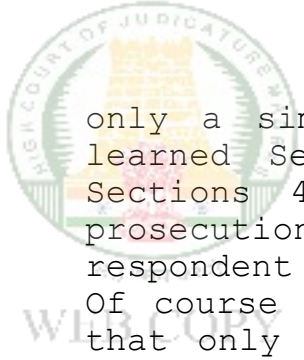
For R-2 : No appearance.

ORDER

The petitioners are facing trial in C.C.No.184 of 2011 on the file of the learned Judicial Magistrate No.I, Tirunelveli, for the offences under Sections 420 and 506(ii) of I.P.C.

2. The second respondent herein is the defacto complainant. It is seen that from the reading of the statements recorded under Section 161 of Cr.P.C., the defacto complainant had lent certain sums of money to the petitioners herein and that according to the defacto complainant, the same was not returned.

3. The learned senior counsel appearing for the petitioners has filed a typed set of papers enclosing the notices exchanged between the parties. The reading of the same would show that it is



only a simple case of lending. As rightly pointed out by the learned Senior counsel for the petitioners, the ingredients of Sections 420 of I.P.C., have been added so as to enable the prosecution to file a formal final report. No doubt, the second respondent had lent certain sums of money to the petitioners herein. Of course the quantum is in dispute. The petitioners would claim that only a sum of Rs.4,00,000/- was received. According to the defacto complainant, a sum of Rs.24,05,000/- was given. These transactions date back to the years 2006 to 2007. Merely because, the borrowers had committed default, the same cannot convert a transaction into one under Section 420 of I.P.C.

4. This Court is of the view that the ingredients of Section 420 of I.P.C., are clearly not made out. This Court also can take judicial notice of the fact that the allegation of criminal intimidation is also thrown in so as to secure registration of First Information Report, since, it is a cognizable offence.

5. This Court is of the view that continuance of the impugned prosecution would amount to an abuse of legal process. Interest of justice require the impugned proceedings are liable to be quashed. Therefore, the proceedings in C.C.No.184 of 2011 on the file of the learned Judicial Magistrate No.I, Tirunelveli, stand quashed. The Criminal Original petition stands allowed, accordingly. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1. The Judicial Magistrate No.I,
Tirunelveli.
2. The Inspector of Police,
City Crime Branch,
Tirunelveli.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC to M/s.Ajamal Associates in SR.No.76633.

PMU

DS/SKN/SAR-1 :21.08.2018: 2P/5C