



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.04.2018

CORAM

THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

Crl.O.P.(MD)No.14778 of 2013

and

M.P(MD).Nos.1 and 2 of 2013

1.Adhilakshmi
2.L.Ramanujam
3.Padmavathy
4.R.Rukmani

...Petitioners/Accused Nos.1 to 4
Vs.

1.State Rep.by
The Inspector of Police,
West Police Station,
Kovilpatti.

...1st Respondent/Complainant

2.Ramachandran

... 2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to proceedings in C.C.No.192 of 2013 on the file of the Judicial Magistrate No.II, Kovilpatti and quash the same in so far as it relates to the petitioners.

For Petitioners : Mr.A.Sivasubramanian

For R1 : Mr.A.Robinson
Government Advocate
(Criminal side)

For R2 : No appearance.

ORDER

This Criminal Original Petition has been filed to quash C.C.No.192 of 2013 on the file of the Judicial Magistrate No.II, Kovilaptti.

2.The first respondent herein has laid a final report against the petitioners for the offences under Sections 294(b), 506(ii) I.P.C., and Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Ordinance Act, 2003.

3.The second respondent herein is the defacto complainant. Though notice was served in this quash petition on the second respondent, there is no appearance on the side of the second respondent.

4.Heard the learned counsel appearing for the petitioners and the learned Government Advocate(Crl.Side) appearing for the first respondent.



5.The substance of the final report filed against the petitioners herein is that the second respondent availed a loan from the petitioners to the tune of Rs.4,50,000/- in the year 2003. The second respondent had issued cheques as well as pro-notes in favour of the petitioners. According to the second respondent, he had paid a sum of Rs.22,500/- towards interest. Even though subsequently he paid a sum of Rs.5,00,000/- in three installments, the petitioners did not return the signed cheques and signed pro-notes. When the witnesses 1 to 5 went to the house of the first petitioner on 17.09.2012 at about 7.30 p.m. and demanded return of all the instruments earlier given by him, the first petitioner is alleged to have demanded a further sum of Rs.11,00,000/- towards interest. The first petitioner is said to have threatened them that if the said amount is not paid, the signed cheques and pro-notes executed by the second respondent would be utilized and false case would be filed on that basis. The second petitioner herein is also said to have repeated the same threat. Petitioners 3 and 4 had abused the second respondent. The charge is that the petitioners had demanded the exorbitant interest amount of Rs.11,00,000/-.

6.When the matter was taken up for hearing, the learned counsel appearing for the petitioners submitted that the first petitioner has since died. The second petitioner is aged about 81 years and he is suffering from cancer. Regarding the third petitioner, she is only daughter and she has not played any role in the transaction. Even according to the prosecution, she is only said to have abused the second respondent. The fourth petitioner is already aged about 80 years and she is the sister of the second petitioner.

7.It has been further pointed out by the petitioners herein that C.C.No.428 of 2012 was filed against the second respondent, in view of the dishonour of the cheques issued by him. In the said case, he was acquitted and questioning the same, CrI.A(MD).No.274 of 2013 was filed before this Court and the said appeal has now been transferred to the Sessions Court.

8.The learned counsel for the petitioners contended that admittedly, the second respondent had borrowed money from the first petitioner. There is absolutely nothing on record to show that the loan transaction was duly serviced or repaid. Even according to the prosecution, the first petitioner is the creditor. She has passed away. It is also seen that the cheque issued by the second respondent was dishonoured and in that regard, prosecution was initiated under Section 138 of Negotiation Instrument Act. The same is now pending at the appellate stage as the second respondent has been acquitted. From the materials on record, it is seen that the petitioners 3 and 4 have not played any role whatsoever. Further, the second petitioner is aged about

81 years and he is suffering from cancer.

9. In such circumstances, no purpose will be served by permitting the prosecution to continue. It is also seen that the defacto complainant has not appeared before this Court to oppose this quash petition. Section 3 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act 2003 prohibits any person from charging exorbitant interest on any loan advanced by him and the contravention of the provisions is an offence punishable under Section 4 of the Act. In this case, there is absolutely nothing on record to show or indicate that the second respondent was charged with the Exorbitant Interest. On the other hand, this Court can very well infer that only to avoid the consequence of cheque dishonour, the impugned complaint has been lodged.

10. This Court comes to the conclusion that there is absolutely no material to indicate that exorbitant interest was charged. The transaction is said to date back to the year 2003. The impugned complaint was lodged only in the year 2012. During this period of 9 years, there is no exchange of correspondence. Excepting the oral accusation of the defacto complainant, there is no credible material to fasten the petitioners with any penal liability. Therefore, this Court has no hesitation to quash the impugned proceedings. C.C.No.192 of 2013 on the file of the Judicial Magistrate No.II, Kovilpatti stands quashed.

11. Accordingly, this Criminal Original petition is allowed. Consequently, the connected miscellaneous petitions are closed.

Sd/
Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No.II,
Kovilpatti.
 2. The Inspector of Police,
West Police Station,
Kovilpatti.
 3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- +1cc to Mr.A.Sivasubramanian, Advocate, SR.No.60821

CrI.O.P.(MD)No.14778 of 2013
and
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MSA