



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.02.2018

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Cr1.O.P.(MD)No.2491 of 2013 and
M.P.(MD)No.1 of 2013

1.Annapattu
2.Mamundi Muthuraja ... Petitioners/Accused No.1 and 2

Vs.

Sathish Kumar ... Respondent/Defacto complainant

PRAYER: The Petition filed under Section 482 Cr.P.C. to call for the records and quash the private complaint in C.C.No.595 of 2012 on the file of the Judicial Magistrate, palani.

For Petitioners : Mr.S.Muthukrishnan
For Respondent : Mr.P.Chinnian

ORDER

This Criminal Original Petition has been filed to call for the records and quash the private complaint in C.C.No.595 of 2012 on the file of the Judicial Magistrate, Palani.

2.The offence alleged against them in the above said private complaint is under Sections 447, 294(b), 506(i) and 427 I.P.C.

3.Admittedly, from 10.12.2004 onwards, the petitioner and the respondent herein are having Civil disputes before the District Munsif Court, Perampalur. In the complaint given by the defacto complainant it is specifically alleged that during the time of occurrence, the petitioner herein made threat and criminally initiated the de-facto complainant. So the issue to be decided in the complaint alleged by the de-facto complainant is whether the petitioner committed the offence or not, which rests on the factual aspects.

4.In this regard, it is relevant to consider the decision of the Hon'ble Supreme Court rendered in **Ajay Kumar Das Vs. State of Jharkhand and another** reported in **2011 (12) SCC 319**, wherein, the Apex Court has held as follows:

''15. allegations will have to be dealt with by the court at different stages for which liberty would be available to the appellant. In our considered opinion, this is not the stage when the court would make an inquiry into the factual position to find out as to



whether or not the appellant is guilty of the charges or not. The appellant, in our considered opinion, will have sufficient opportunity to place his entire case before the Court at the time of framing of the charge since charge-sheet had already been filed against the appellant also holding that a case under Section 304-B and Section 34 is made out. We do not wish to enter into the factual details for any discussion on them at this stage as the same may prejudicially affect the case of the appellant.''

5. Accordingly, following the Principal laid by the Honourable Apex Court in the aforesaid Judgment, the grounds raised by the petitioner has to be settled only by way of examining the witness in the Trial Court before which the petition mentioned case is pending. The arguments advanced by the learned counsel appearing for the petitioner that the Court was not correct taking cognizance is not substantiated with materials. Therefore, this Court finds that there is prima facie allegation made out against this petitioner.

6. In view of the above factual and legal position, this Court has come to the conclusion that the present petition is devoid of merits.

7. However the learned counsel requested this Court for an order of exemption from appearance before the Trial Court to this petitioner. The exemption is granted.

8. Accordingly, while dismissing the Criminal Original Petition as devoid of merits, exemption is granted to the petitioner as to his appearance before the Trial Court. Needless to say that as and when directed, the petitioner shall appear before the Trial Court and cooperate for completion of the Trial. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate, Palani.
2. The Chief Judicial Magistrate, Dindigul.

SMI/CP
TE/JC/SAR-4 : 16/03/2018 : 2P/3C