



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.11.2019

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.(MD) No.10762 of 2019

and

Crl.MP(MD)Nos.6777 & 7961 of 2019

WEB COPY

Natham R.Viswanathan

... Petitioner/Accused No.1

Vs.

1.The Inspector of Police,
Town Police Station,
Dindigul.

... Respondent/Complainant

2.Sabapathi

... Respondent/Defacto
complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in C.C.No.485 of 2019 pending on the file of the learned Judicial Magistrate II, Dindigul and quash the same.

For Petitioner : Mr.Prabhakaran
Senior Counsel for Mr.R.Saravana Kumar

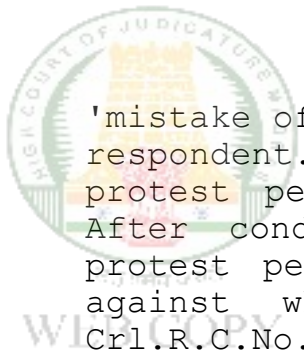
For R1 : Mr.K.Suyambulinga Bharathi
Government Advocate (Crl.Side)

For R2 : Mr.V.Illanchezian

ORDER

This petition has been filed to quash the proceedings in C.C.No.485 of 2019 pending on the file of the learned Judicial Magistrate II, Dindigul.

2. The learned Senior Counsel appearing for the petitioner would submit that the second respondent alleged that he is the Deputy Secretary of Youth Wing of a Political Party and he is running a travel agency in the name and style of 'SVR Travels' and also running real estate business in the name of 'SVR Land Promoters'. The defacto complainant gave a sum of Rs.4,97,90,700/- to various persons as per the instructions of the petitioner in order to parliamentary election expenses, which was held in the year 2014. The petitioner repaid a sum of Rs.2 Crores to the defacto complainant and he did not repay the balance amount. Hence, the defacto complainant lodged a complaint before the Town North Police Station, Dindigul, as against the petitioner and the first respondent registered a case in Crime No.129 of 2017 for the offences under Sections 420, 506 (i) of IPC and closed the case as



'mistake of fact' and referred charge sheet was issued to the second respondent. On receipt of the same, the second respondent filed a protest petition before the Judicial Magistrate No.II, Dindigul. After conducting enquiry, the learned Magistrate dismissed the protest petition in Crl.M.P.No.4944 of 2017 dated 07.11.2017. As against which, the second respondent preferred revision in Crl.R.C.No.924 of 2017 before this Court and the same was dismissed on 05.01.2018. Once again, the second respondent filed a private complaint in Crl.MP.No.761 of 2019 before the learned Judicial Magistrate II, Dindigul, for register a crime as against the petitioner. The learned Magistrate, without considering the above closure report submitted by the first respondent and the order passed by this Court in Crl.R.C.No.924 of 2017, mechanically had taken cognizance for the offences under sections 420, 506 (i) of IPC and issued summons to the petitioner. He further submitted that the first respondent after examining 33 witnesses, closed the case as 'mistake of fact'. This Court observed that the second respondent disbursed such a huge amount to the persons as named by the petitioner herein without even producing any source for the same and obtaining receipts from them defies credulity. Therefore, the impugned private complaint is nothing, but clear abuse of process of law and Court. Therefore, he prayed for quashment of the entire proceedings.

3.Per contra, the learned counsel for the second respondent would submit that the petitioner is the Ex-minister. The second respondent is being the same party member, he gave a sum of Rs.4,97,90,700/- to various persons as per the instructions of the petitioner in order to parliamentary election expenses in the year 2014. Thereafter, he repaid a sum of Rs.2 Crores and he failed to repay the balance amount thereby, he cheated the second respondent. When it was questioned by him, the petitioner used the position and threatened him with dire consequences. Though, his complaint was initially registered by the first respondent subsequently closed as 'mistake of fact'. The petitioner is being powerful person, the police officials close the complaint. Now, the learned Magistrate rightly, taken cognizance for the offences under Sections 420 and 506 (i) IPC as against the petitioner, after recording the sworn statement of the petitioner and other supportive witnesses. He further submitted that the documents, which were annexed along with the complaint have to be proved only during the trial. Therefore, he sought for dismissal of the quashment.

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

5.It is seen from the records, the second respondent lodged a complaint against the petitioner alleged that he lend money to



the tune of Rs.4,97,90,700/- to various persons during the parliamentary election in the year 2014 as instructed by the petitioner. Thereafter, he repaid only to the tune of Rs.2 Crores and he failed to repay the remaining amount. The petitioner also had taken more time for repayment. When it was questioned by the second respondent, the petitioner threatened him with dire consequences.

6. On receipt of the said complaint, the first respondent registered FIR in Crime No.129 of 2017 for the offences under Sections 420 and 506 (I) IPC as against the petitioner. After due investigation, the first respondent closed the FIR as 'mistake of fact' and filed closure report before the learned Judicial Magistrate II, Dindigul, dated 16.06.2017. As against which, the second respondent filed protest petition. After conducting enquiry found that there is no *prima facie* case to attract offences under Sections 420 and 506 (i) IPC and there is no material evidence to show that the second respondent herein lend a money to the tune of Rs.4,97,90,700/-. The second respondent also did not produce any of the document to show that he source of income to lend such a huge amount to the petitioner herein. Therefore, the learned Magistrate dismissed the protest petition filed by the second respondent and accepted the closure report filed by the first respondent by an order dated 07.11.2017. Again, the second respondent challenged the said order by way of filed revision in Crl.R.C.No.924 of 2017 before this Court. The first respondent filed a counter and stated as follows:-

"3. I humbly submit that during the investigation 33 witnesses have been examined and statements have also been recorded from them. The above said 33 witnesses made specific denial that they have never received any amount from the petitioner as alleged by him. Having completed the investigation, I filed a final report before the learned Judicial Magistrate No.II, Dindigul as 'Mistake of Facts". Further a notice was also served upon the petitioner about closure report filed before the learned Judicial Magistrate No.II, Dindigul. Having received the notice, the petitioner filed a protest petition and the same was taken on file in Cr.M.P. (MD) No.4944 of 2017, seeking further investigation.

4. I humbly submit that the learned Judicial Magistrate No.II, Dindigul by its order dated 07.11.2017 dismissed the protest petition filed by him. The Hon'ble Supreme Court of India in the judgment reported in 2017 (1) MWN (Crl)449(SC) held that the further investigation under Section 178 (3) Cr.P.C. could not be ordered at the instance of the defacto complainant. This Hon'ble Supreme Court of India further held that the further investigation can only be ordered at the instance of



investigation officer. The defacto complainant has no fight to file petition for seeking further investigation. The trial Court rightly dismissed the protest petition filed by the petitioner. Further, this Hon'ble High Court in the Judgment reported in 2017 (1) LW(Crl)485 held that further investigation could not ordered at the instance of defacto complainant."

7. According to the first respondent he conducted detailed investigation and examined 33 witnesses and found that no one was received any amount from the second respondent and therefore, the first respondent closed the FIR as 'mistake of fact'. Thereafter, the second respondent filed a private complaint before the very same Court. The learned Judicial Magistrate No.II, Dindigul, without even considering the above facts and circumstances, mechanically recorded the sworn statement and had taken cognizance for the offences under Sections 420 and 506 IPC as against the petitioner herein.

8. That apart, from the reading of the complaint, the allegation is that the second respondent lend a sum of Rs.4,97,90,700/- to the various persons as instructed by the petitioner through the parliamentary election in the year 2014. Thereafter, he repaid a sum of Rs.2 Crores and he fails to repay the balance amount. Even according to the second respondent, these allegations never constitute any of the offence under the Indian Penal Code. The entire transaction is civil in nature and as such, no offence is made out on the complaint lodged by the second respondent. Therefore, the first respondent rightly, closed the complaint as 'mistake of fact'.

9. Under these circumstances, the learned Judicial Magistrate without any *prima facie* material to attract offences under Sections 420 and 506 (i) IPC, mechanically taken cognizance. Therefore, the entire proceedings is vitiated and it is nothing, but, clear abuse of process of law. As such, the petitioner need not go for the ordeal trial.

10. In view of the above, the proceedings in C.C.No.485 of 2019 pending on the file of the learned Judicial Magistrate II, Dindigul, is hereby quashed and this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (writs)

// True Copy //

Sub Assistant Registrar (CS)



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To

1. The Judicial Magistrate II, Dindigul.

2. The Inspector of Police,
Town Police Station,
Dindigul.

3. The Additional Public Prosecutor.
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.V. ILLANCHEZIAN, Advocate (SR-100222[F] dated
21/11/2019)

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