



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Tuesday, the Twenty Ninth day of January Two Thousand Nineteen

PRESENT

The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL OP(MD) No.17429 of 2018

1 RIYAZDEEN
2 SARMILA PARVEEN
3 MOHAMED RASHEED

... PETITIONERS / ACCUSED
No.1 to 3

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
DISTRICT CRIME BRANCH, THENI,
THENI DISTRICT
Crime No.36 of 2018

... RESPONDENT / COMPLAINANT

For Petitioner : Mr.J.SULTHAN BASHA Advocate

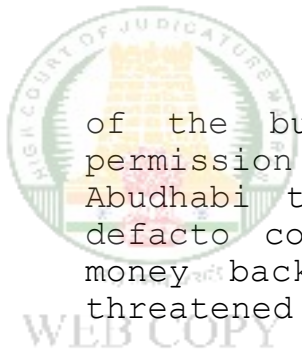
For Respondent : Mr.S.CHANDRASEKAR, Additional Public Prosecutor

PETITION FOR ANTICIPATORY BAIL Under Sec. 438 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioners, who apprehend arrest at the hands of the respondent police for the alleged offences punishable under Sections 120(b), 294(b), 406, 420 and 506(i) of IPC., in Crime No.36 of 2018, on the file of the respondent Police, seek anticipatory bail.

2. The case of the prosecution is that the defacto complainant / intervener had lodged a complaint on 29.08.2018 stating that the first petitioner had entered into a partnership deed on 20.08.2016 with the defacto complainant and as per the said deed, it was decided to engage themselves in a Supermarket and Laundry business at Abudhabi and the estimated investment was to the tune of Rs.1.5 Crores, as their respective contributions. Initially, the first petitioner commenced the said business with sole contribution investing the above said total investment and the defacto complainant had accepted to promise to pay the share within the stipulated time. On the basis of the said agreement, the petitioners 1 and 2 had received a sum of Rs.55,90,000/- from the defacto complainant on various instalments. On enquiry, the defacto complainant came to know that the investment and the work done, as projected by the first petitioner, is not true and the commencement

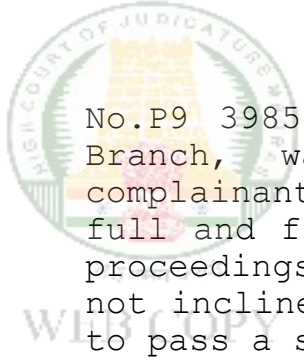


of the business was only in preliminary stage. Further, no permission or licence have been taken from the Authorities in Abudhabi to commence the said business. Thereafter, when the defacto complainant questioned the same and asked for return of money back, the accused had abused using filthy language and threatened the defacto complainant. Hence, the complaint.

3. The learned counsel appearing for the petitioners would submit that the 1st petitioner had not committed any offence and the complaint itself is calculated and motivated one, to play fraud and use it as an arm-twisting method to extract unlawful demand of the defacto complainant. As per the agreement between the petitioners and the defacto complainant, the defacto complainant had not made his equal share of contribution, as agreed upon. On believing the words, the 1st petitioner had leased out two shops for running the said business with huge investment in establishing the said shop, completed upto 80% of the work and was to commence the business. Under such circumstances, the defacto complainant had paid only Rs.42,50,000/- and refused to pay his further contribution in violation of the deed, thereby caused great loss and reputation to the 1st petitioner. The first petitioner neither cheated the defacto complainant nor used any unparliamentary words at any point of time and the defacto complainant fulfilling his obligations had not only collapsed the business ventures and had now lodged a false complaint to extract money. He would further submit that the second petitioner is the wife of the 1st petitioner and the 3rd petitioner is an Engineering College Student, who is studying at Coimbatore. The entire family members of the petitioners have been falsely implicated in this case. Further, failed business ventures which is covered by a partnership deed and is now given criminal colour and a false case has been foisted against them.

4. During pendency of the above case, the case was referred to the Mediation and Conciliation Centre, attached to this Bench and Mediation had taken place on 12.10.2018, 24.10.2018 and 09.11.2018. During Mediation, the defence between the first petitioner and the defacto complainant had been ironed out and thereafter, the modality of the payments were agreed between the defacto complainant and the 1st petitioner, who had appeared before this Court on 11.12.2018 and the defacto complainant agreed and received Rs.5,00,000/- by way of Demand Draft, bearing No.894188, drawn at Federal Bank Limited, Periyakulam Branch, Theni District, dated 11.01.2018 and thereafter, agreed to receive the remaining payments and the first petitioner has to pay a sum of Rs.10,00,000/-, on or before 24.01.2018, and thereafter, the balance amount has to be paid.

5. On today ie., when the matter is taken up hearing, the defato complainant appeared and submitted a revised schedule was agreed upon and Rs.3,00,000/- cash was paid on 29.01.2019 and the acknowledgement for the same has been made in the affidavit filed by the first petitioner herein wherein it was also agreed between them that for the balance amount of Rs.22,00,000/-, a cheque, bearing



No.P9 398515, dated 20.02.2019, drawn at Canara Bank, Periyakulam Branch, was handed over. On realization of the same, the defacto complainant agreed that the entire dues would be discharged towards full and final settlement and agreed to give quietus to the above proceedings and further undertook that the defacto complainant was not inclined to further proceed with the case and agreed this Court to pass a suitable orders to quash FIR in Crime No.36 of 2018.

6. It is agreed that the cheque would be honoured and that the first petitioner will not cause its dishonour and he shall make proper arrangement for encashing the cheque. The first petitioner has also filed an undertaking in this regard. This stipulation is made only to ensure that if the cheque is dishonoured, the first petitioner will be liable not only for the penal consequence in terms of Section 138 of Negotiable Instruments Act, but also for Contempt of Court. The cheque will be honoured on or before 20.02.2019.

7. The respondent Police is directed to keep investigation on hold till February 2019, till the cheque is honoured and thereafter, on ascertaining honour of the cheque, dated 20.02.2019 for Rs.22,00,000/-, shall file a closure report. This order has been passed with the consent of the petitioners as well as the defacto complainant.

8. It is not necessary for the petitioners to surrender before the jurisdictional Magistrate or execute sureties or appear before the respondent. The only condition that is imposed by this Court is that the petitioners shall ensure that the cheques are honoured without default.

9. In the light of the above development, this Criminal Original Petition stands closed.

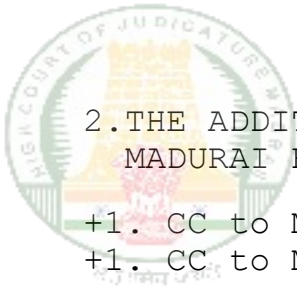
sd/-
29/01/2019

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1.THE INSPECTOR OF POLICE
DISTRICT CRIME BRANCH, THENI,
THENI DISTRICT.



2. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to M/S.AJMAL ASSOCIATES Advocate SR.No.1770

+1. CC to Mr.V.BALAJI Advocate SR.No.1713

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ORDER

IN

CRL OP(MD) No.17429 of 2018

Date :29/01/2019

TK/VR/SAR-1/06.02.2019/4P/5C