



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.10.2019

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P. (MD)No.2841 of 2015

and

M.P. (MD)Nos.1 and 2 of 2015

WEB COPY

Lawrence Antonia

... Petitioner

Vs

1.State Rep. By

The Inspector of Police,
District Crime Branch,
Ramanathapuram District.

2.Madhalaimuthu

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records culminating in C.C.No.129 of 2014, pending on the file of the learned Judicial Magistrate No.II, Ramanathapuram and to quash the same insofar as the petitioner concerned.

For Petitioner : Mr.Arun Anbumani

For Respondents : Mr.A.Robinson

Govt. Advocate (Crl. Side) for R1

: Mr.J.Sulthan Basha

For M/s.Ajmal Associates for R2

O R D E R

The petitioner is facing trial in C.C.No.129 of 2014 on the file of the learned Judicial Magistrate No.II, Ramanathapuram District, for the offences under Sections 465, 406, 420 and 120(B) of I.P.C. The defacto complainant in this case is the second respondent herein namely., Madhalaimuthu. The second respondent herein lodged a complaint with District Crime Branch, Ramanathapuram District against one Manoj Kumar.

2.The case set out in the FIR is that the son of the defacto complainant namely., Celin Raja is employed abroad and that he had left a signed blank cheque in the house of the second respondent and that the same had been stolen and en-cashed by the said Madhalaimuthu on 22.05.2012. The en-cashed amount is Rs.11,15,500/-. Due intimation was sent to the son of the second respondent and he was shocked to know that he never issued a cheque in favour of Manoj Kumar and he caused registration of Crime No.7 of 2012 against Manoj Kumar for the offences under Sections 465, 420 and 380 of I.P.C. During the course of investigation, the petitioner herein was also added as A2. Alteration report was also



filed in this regard. The petitioner herein is none other than the estranged daughter-in-law of the second respondent herein. The marriage between the petitioner and the son of the second respondent had taken place on 04.10.2009. Two children were also born. They had been living separately since 15.08.2010. The stand of the defacto complainant is that the petitioner, who had access to the cheque in question had stealthily removed the same and handed over to the first accused for encashment. Final report was also filed on the same lines. Cognizance of the offences was taken. The case was taken on file in C.C.No.129 of 2014, on the file of the learned Judicial Magistrate No.II, Ramanathapuram. To quash the same, this criminal original petition has been filed.

3.Heard the learned counsel on either side.

4.The learned counsel appearing for the defacto complainant submitted that the petitioner has not made out a case for exercising the inherent powers of this Court and that the contentions raised by the petitioner are factual in nature and that therefore, the petitioner must be relegated to establish her defence in a regular trial.

5.I am unable to agree with the contentions of the learned counsel appearing for the defacto complainant.

6.As rightly contended by the learned counsel appearing for the petitioner, the petitioner herein has been charged with the offences under Sections 465, 406, 420 and 120(b) of I.P.C. It is only the second accused who had filed this quash petition. The first accused is not before me.

7.It is not the case of the defacto complainant that the cheque in question was entrusted to the custody of the petitioner. Only if the element of entrustment is present, the ingredients set out in Section 406 of I.P.C., will be attracted. When even according to the second respondent, there was no entrustment, the question of fastening penal liability under Section 406 of I.P.C., will not arise.

8.It is again not the case of the defacto complainant that the petitioner held out some false assurance to the defacto complainant with a dishonest intention and made him part with the valuable security. Therefore, the offence of cheating is also not made out. The charge under Section 465 of I.P.C., also will not stand. This is because the cheque in question was presented for collection only by the first accused. The petitioner herein has not done anything. If at all, only a charge under Section 120(b) of I.P.C., that is conspiracy can be pressed against the petitioner. For that, there must be some material. In this case, there is absolutely no material whatsoever to connect this petitioner with the first accused. Therefore looked at from any angle, none of the



ingredients of any of the offences with which the petitioner has been charged are present in this case.

9.This Court in order to satisfy its conscience, wanted to see if the petitioner can be charged with the offence of theft. Again there is no material for the said charge. I went through the statements recorded under Section 161 of Cr.P.C. In the final report only seven witnesses have been shown. L.W.7 is the investigating officer. L.W.6 had also conducted part of the investigation. L.W.4 and L.W.5 are bank officials. L.W.1 is the defacto complainant. L.W.3 is the husband. L.W.2 is the mother-in-law. L.W.3 was admittedly away from India during the relevant time. L.W.1 as well as L.W.2 only suspected the apparent involvement of the petitioner. Suspicion is one thing, proof is another and there is a long distance to travel between the two. Thus, looked at from any angle, the continuance of the impugned prosecution against the petitioner can only be characterized as an abuse of legal process. In this view of the matter, the impugned proceedings stand quashed as far as the petitioner is concerned. Of course, it will proceed as against the first accused. The criminal original petition is allowed on these terms. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Crl.Side)

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Sub Assistant Registrar(CS)

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To:

1.The Judicial Magistrate No.II,
Ramanathapuram.

2.The Inspector of Police,
District Crime Branch,
Ramanathapuram District.

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

+1 CC to M/s.ANBUMANI, Advocate (SR-92291[F] dated 16/10/2019)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-92533[F])

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