WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 14.10.2019
CORAM :
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
CRL.O.P.(MD)No.7498 of 2015 and
M.P.(MD)Nos.1 & 2 of 2015

1. Ayyanar
2. Ayvar Raj
3. A.Palanivel ... Petitioners/Accused Nos.1 to 3

Vs.

1. The State represented by,
   The Inspector of Police,
   Aruppukkottai Town Police Station,
   Virudhunagar District.
   (Crime No.797 of 2012)

2. Dr.Jeyanthi ... Respondents/Defacto Complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C., to call for the entire records pertaining to the case in C.C.No.71 of 2015 on the file of the learned Judicial Magistrate, Aruppukkottai, Virudhunagar District and quash the same.

For Petitioners : Mr.R.Anand

For R-1 : Mr.A.Robinson,
Government Advocate(Crl.Side).

For R-2 : No appearance.

ORDER

The first petitioner is the father of petitioners 2 and 3. The petitioners are carrying on business. The second respondent herein is the defacto complainant in this case. According to her, the first petitioner is running a chit group in which she was a subscriber and that the first petitioner had taken signed blank pro-notes and cheques. The same were given as security by her. According to the defacto complainant, the signed blank cheques issued by her were misused and presented for collection by petitioners 2 and 3. The second respondent would further allege that on 20.09.2012, the petitioners came to her clinic and abused her in filthy language. Hence, she lodged an information before the Aruppukkottai Town police station leading to registration of Crime No.797 of 2012.

2. Investigation was taken up and final report was filed before the Judicial Magistrate, Aruppukkottai. Cognizance of the offences under Sections 294(b), 406, 420 and 506(ii) of I.P.C. was taken. The case was taken on file in C.C.No.71 of 2015. To quash the same, this Criminal Original petition has been filed.

3. Even though the second respondent was served and her name is printed in the cause list, there is no appearance on her behalf.

https://hcservices.ecourts.gov.in/hcservices/

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

5. It is seen from the materials on record that following the dishonour of the cheques issued by the defacto complainant on 30.08.2012, statutory notice under Section 138 of the Negotiable Instruments Act was issued on 05.09.2012. It is further seen that the second respondent was prosecuted for the offence under Section 138 of the Negotiable Instruments Act in C.C.Nos.270 and 271 of 2012 on the file of the Judicial Magistrate, Aruppukkottai. By Judgment dated 27.03.2014, the defacto complainant was found guilty and she was also sentenced to six months Rigorous Imprisonment and she was also directed to pay compensation. Of course the same were set aside on an appeal filed by the defacto complainant. The petitioners' counsel would point out that challenging the Judgment of acquittal passed by the appellate Court, they have filed C.A.Nos.170 and 171 of 2016 and they are still pending.

6. It is thus clear and obvious that the case on hand has been given a counter blast to the prosecution initiated under Section 138 of the Negotiable Instruments Act. The complaint before Aruppukkottai Town police station lodged by the defacto complainant on 21.09.2012. Even before that, she has received notice under Section 138 of the Negotiable Instruments Act. Thus to wreck vengeance and out of spite, the impugned prosecution had been lodged. Since the impugned prosecution has been lodged only as a counterblast to the prosecution initiated by petitioners 2 and 3 herein, I am of the view that the continuance of the impugned prosecution would be an abuse of legal process. However, it is made clear that quashing the impugned proceedings will not in any way take away the rights of the defacto complainant to contest the criminal appeals filed by the petitioners herein.

7. The learned counsel appearing for the petitioners would give an undertaking before this Court that they would not take advantage of this order made in this criminal original petition in the pending appeal against acquittal. C.A.Nos.170 and 171 of 2016 said to have been filed by petitioners 2 and 3 against the Judgment of acquittal made in favour of the second respondent will be dealt with independently.

8. This Criminal Original petition stands allowed, on these terms. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Crl.side)

// True Copy //

https://hcservices.ecourts.gov.in/hcservices/

/ /2020

Sub Assistant Registrar(CS)

WEB COPY

pmu

To

1. The Judicial Magistrate, Aruppukkottai,
   Virudhunagar District.

2. The Inspector of Police,
   Aruppukkottai Town Police Station,
   Virudhunagar District.

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

+1 CC to M/s.R.ANAND, Advocate (SR-92039[F] dated 15/10/2019)

CRL.O.P.(MD)No.7498 of 2015 and
M.P.(MD)Nos.1 & 2 of 2015
14.10.2019

SMA/29/01/2020/3P/5C

https://hcservices.ecourts.gov.in/hcservices/