



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.11.2019

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P. (MD) No.3991 of 2017

and

Crl.M.P. (MD) Nos.2909 & 2910 of 2017

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K.Selvaraj ... Petitioner/ Sole Accused
Vs.

1) The State Rep. by
The Inspector of Police,
Nithiraivilai Police Station,
Nithiraivilai,
Kanyakumari District.
(Crime No.126 of 2015) ... Respondent/Complainant

2) P.Nirmal Nesakumar ... Respondent/
De facto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the final report as made in C.C.No.110 of 2016 on the file of the Judicial Magistrate No.II, Kulithurai, Kanyakumari District in relation to Crime No.126 of 2015 on the file of the Inspector of Police, Nithiravilai Police Station, Nithiravilai, Kanyakumari District and quash the same.

For Petitioner: Mr.S.Palani Velayutham
For R-1 : Mr.S.Chandrasekar,
Additional Public Prosecutor
For R-2 : Mr.M.Saravana Kumar

O R D E R

This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.110 of 2016 on the file of the learned Judicial Magistrate No.II, Kulithurai, Kanyakumari District in relation to Crime No.126 of 2015 on the file of the Inspector of Police, Nithiravilai Police Station, Nithiravilai, Kanyakumari District.

2. The second respondent, who is the *de facto* complainant has given a complaint to the respondent police to the effect that he had certain complaints pending against him before the police and that the petitioner had promised to get the cases closed by talking with the concerned officials and for that purpose, the petitioner received a sum of Rs.3,00,000/-. The criminal cases were not closed and when the second respondent questioned the

<https://hcservices.mca.gov.in/hcservices/>



Based on this complaint, an F.I.R came to be registered in Crime No.126 of 2015 and after the completion of the investigation, a final report has also been filed before the Court below for the alleged offence under Sections 406, 420, 294(b) and 506(ii) of I.P.C.

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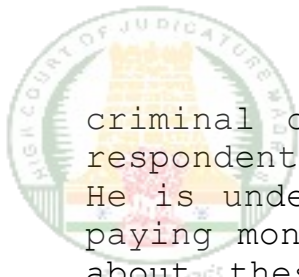
3. The learned counsel for the petitioner submitted that the second respondent was working as a Secretary of Mangadu Panchayat. There were several criminal cases pending against him and he was kept under suspension. The learned counsel submitted that the petitioner himself had given nearly three complaints against the second respondent and the same was pending at the stage of F.I.R. and therefore, the second respondent had a malafide intention to give a false complaint against the petitioner. The learned counsel further submitted that even if the allegations made in the final report are taken as it is, no offence has been made out against the petitioner. Therefore, the learned counsel sought for quashing of the proceedings against the petitioner.

4. The learned counsel appearing on behalf of the second respondent submitted that the petitioner had given false complaints against the second respondent and all these complaints came to be closed. The learned counsel submitted that the petitioner had received a sum of Rs.3,00,000/- with a promise to contact the higher level officials and to close the criminal cases pending against him. This was not done and when questioned, the second respondent was abused and threatened. The learned counsel submitted that there were sufficient allegations made against the petitioner and that the petitioner has to undergo trial in this case.

5. The learned Additional Public Prosecutor appearing on behalf of the respondent police submitted that the statements that have been given by the witnesses clearly establishes the fact that the petitioner had received Rs.3,00,000/- and cheated the *de facto* complainant. Learned counsel further submitted that the witnesses have spoken about the abusive language used by the petitioner and also the threat exerted by the petitioner.

6. This Court has carefully considered the submissions made on either side and the materials available on record.

7. It is rather unfortunate that the second respondent had the audacity to give a complaint to the effect that there were criminal cases pending against him and he wanted them to be closed by contacting higher officials and for that purpose, he paid money to the petitioner and the petitioner did not fulfill the promise and get the criminal cases closed against the second respondent. For these allegations, the respondent police should have filed a



criminal case only as against the second respondent. The second respondent is none other than the Secretary of Mangadu Panchayat. He is under the impression that a criminal case can be closed by paying money to the higher officials. The police did not feel bad about these allegations made by the second respondent in the complaint. Rather, they have studiously investigated the case and filed a final report against the petitioner.

8. In order to attract the offence under Section 420 of I.P.C., there should be a fraudulent or dishonest inducement of a person which resulted in the person delivering any property and there is an act or omission on the part of the accused person which should cause damage or harm to the person induced in body, mind, reputation or property. The accused person wants the criminal case pending against him to be closed by paying money and since the criminal case was not closed, he questions the person to whom the money was paid. When this amount is not repaid, by no stretch, an offence of cheating is made out. The payment should be made for a lawful purpose and if money has been paid for an unlawful purpose or an illegal purpose or for committing a crime and if those acts have not been performed, the person who paid the money cannot be heard to complain as if he has been cheated. If such complaints are entertained, it will become a mockery on the Criminal Justice System.

9. Similarly in this case, the final report has been taken cognizance for offence under Section 406 of IPC as if there was a criminal breach of trust. In order to attract the offence of criminal breach of trust, the accused person must be entrusted with a property and he should have dishonestly misappropriated or converted the property for his own use or disposed of that property in violation of any law or any legal contract between the parties. There cannot be an agreement between the parties for doing an unlawful act. Such an agreement is per se void and is unenforceable. Even assuming that the petitioner received money from the second respondent in this case, the money is said to have been received to illegally close the criminal cases pending against the second respondent. In the absence of the closure of the criminal case, after receiving such money, by no stretch it can be called as criminal breach of trust.

10. Two more offences which have been added are 294(b) and 506 (ii) of I.P.C. and both the offences are not made out. The present case is clearly a text book case for abuse of process of Court. It is unfortunate that both the police and Court below were insensitive of what was alleged in the complaint. This is a case where the police have mechanically registered an F.I.R. and the Court below has mechanically taken cognizance of the final report. In this case, what the de facto complainant has alleged is that,



he wanted to come out of the criminal case by paying money and this was not even noticed by the police as well as the Court below.

11. This Court has absolutely no hesitation to interfere with the proceedings pending before the Court below. To allow this case to proceed will amount to mockery of Criminal Justice System. Therefore, this Court has to necessarily interfere in exercise of its jurisdiction under Section 482 of Cr.P.C.

12. In the result, the proceedings in C.C.No.110 of 2016 on the file of the learned Judicial Magistrate No.II, Kulithurai, Kanyakumari District in relation to Crime No.126 of 2015 on the file of the Inspector of Police, Nithiravilai Police Station, Nithiravilai, Kanyakumari District is quashed and the Criminal Original Petition is Allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

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To

1. The Judicial Magistrate No.II,
Kulithurai, Kanyakumari District.

2. The Inspector of Police,
Nithiraivillai Police Station,
Nithiraivillai,
Kanyakumari District.
(Crime No.126 of 2015)

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

+1 CC to M/s.M. SARAVANA KUMAR, Advocate (SR-99686[F] dated
20/11/2019)

+1 CC to M/s.S.PALANI VELAYUTHAM, Advocate (SR-99707[F] dated
20/11/2019)

Order made in

Crl.O.P. (MD) No.3991 of 2017

Dated:

19.11.2019