

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2020

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

CRL.O.P.NO.81 OF 2019

AND

CRL.M.P.NO.52 OF 2019

1.Mr.Kaluram

2.Mr.Kishore Kumar

...Petitioners

Vs

1.State rep., by
Inspector of Police,
G3, Kilpauk Police Station,
Kilpauk, Chennai 600 010.
Cr.No.603 of 2018

...1st Respondent/Complainant

2.Mrs.Poonam

...2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code praying to call for the records in Cr.No.603 of 2018 on the file of the 1st respondent, quash the same.

For Petitioner : No appearance.

For Respondents : Mr.S.Karthikeyan,
Additional Public Prosecutor for R1.
Mr.M.Soundar Vijay Arul Ram for R2.

O R D E R

(through Video Conference)

This Criminal Original Petition has been filed seeking to quash the First Information Report registered in Cr.No.603 of 2018 on the file of the 1st respondent.

2.Inspite of repeated adjournments, the learned Counsel appearing for the petitioner has not turned up for placing his submissions. Heard Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing on behalf of the 1st respondent and Mr.M.Soundar Vijay Arul Ram, learned Counsel appearing on behalf of the 2nd respondent.

3. In the First Information Report, which is registered in Cr.No.603 of 2018, the second respondent made allegations against the petitioner that at the request made by the petitioner, an amount of Rs.10,00,000/- was given to him as a loan with undertaking to repay the same within three months. Further, again from the date on which the said amount was given to the petitioner, within two or three months, he wanted more assistance and requested to give Rs.5,00,000/- for which, second respondent had given a cheque for Rs.5,00,000/-. Subsequent to that, since the petitioner could not repay the loan amount, he offered to keep the gold and deposited in the pawn broker shop as security and started to pay the interest to the tune of 15% per month. After so many transactions, in the month of May 2012, in the absence of the second respondent, the petitioner with intention to take back the deposited gold, gave a certified copy of the property document as security by convincing the second respondent's mother to believe that he was the owner of the property and that was an original document good enough as a security. At that time, the petitioner convinced and managed the second respondent's mother to remove the gold deposit without the petitioner's knowledge by cheating her mother. After the said incident, the petitioner stopped to visit the second respondent's house and also not paid any interest by saying lame excuses.

4. Therefore, the said allegations found in the First Information Report discloses the fact that in the absence of the second respondent, the petitioner took away the deposited gold. The said act committed by the petitioner discloses the prima facie case for the offence of cheating. Only in the said circumstances, the first respondent police registered the case under Sections 420 and 506 (i) of Indian Penal Code and under Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 2002. As of now, the said case is under investigation.

5. At this juncture, it is relevant to see the Judgment of Hon'ble Apex Court reported in "2020 2 SCC Cr1 51" in the case of "Rajeev Kourav -vs- Baisahab and others" in which our Hon'ble Apex Court has held as follows:

"8. It is no more res integra that exercise of power under Section 482 Cr.P.C. to quash a criminal proceeding is only when an allegation made in the FIR or the charge-sheet constitutes the ingredients of the offence/offences alleged. Interference by the High Court under Section 482 Cr.P.C. is to prevent the abuse of process of any court or otherwise to secure the ends of justice. It is settled law that the evidence produced by the accused in his defence cannot be looked into by the Court, except in very

exceptional circumstances, at the initial stage of the criminal proceedings. It is trite law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 Cr.P.C. for quashing criminal proceedings. It is clear from the law laid down by this Court that if a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal proceeding."

6. Applying the ratio laid down in the referred Judgment, it is a settled position of law that if prima facie case is made out and discloses the ingredients of the offence, Court cannot quash the criminal proceeding. In this case also, as already observed, allegations found in the First Information Report fairly discloses the prima facie case for the offence under Section 420 of Indian Penal Code. Therefore, the same needs a detailed investigation.

7. Therefore, in over all view, I am of the opinion that petition filed by the petitioner is devoid of merits and accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CJ Conf)

//True Copy//

Sub Assistant Registrar

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To

1. Inspector of Police,
G3, Kilpauk Police Station,
Kilpauk, Chennai 600 010.

2. The Public Prosecutor,
High Court of Madras,
Chennai.

+1cc to Mr.R.Subramaniam, Advocate, S.R.No.38130

Cr1.O.P.No.81 of 2019
and
Cr1.M.P.No.52 of 2019

NRJK (CO)
KKV/23/12/2020