



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.O.P.No.17267 of 2015 &
M.P.No.1 of 2015 &
Crl.M.P.No.4168 of 2017

1.K.Sakthivel
2.S.Ranjani

..Petitioners/1&2 Accused

Vs

1.The State rep. by the
Inspector of Police,
Malayampalayam Police station,
Crime No.75 of 2015,
Erode District.

2.V.Kumaravel

..Respondents/Defacto
Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records pertaining to the criminal case in C.C.No.79 of 2015 on the file of the learned District Munsif-cum-Judicial Magistrate, Kodumudi and quash the same.

For Petitioners : Mr.N.Manokaran

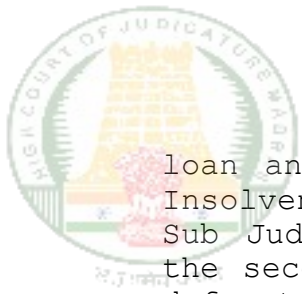
For Respondents : Mr.Charles Prem
Government Advocate (Criminal Side)
for R-1

No appearance for R-2

ORDER

The petitioners are accused Nos.1 and 2 in Crime No.42 of 2015. Based on the complaint lodged by the second respondent, a case was registered for the offence under Section 420 of IPC against the petitioners and charge sheet also has been filed. Based on the said charge sheet, the learned District Munsif-cum-Judicial Magistrate, Kodumudi has taken the case on file as C.C.No.79 of 2015 and the same is pending. The petitioners/accused have filed this present Criminal Original Petition to quash the charge sheet filed against them.

2. The learned counsel for the petitioners would submit the first petitioner has purchased 436 bags of rice worth of RS.6,27,010/- from the defacto complainant on 07.01.2014 as



loan and since he could not repay the loan amount, he filed Insolvency Petition in I.P.No.16 of 2014 before the learned Sub Judge, Tiruchengode against all his creditors, including the second respondent herein. Pending I.P.No.16 of 2014, the defacto complainant has lodged a complaint before the respondent-Police on 12.03.2015. It is further submitted that mere non-payment of loan amount or non-payment of goods purchased, is not amount of cheating or fraud. He would further add that the defacto complainant himself has stated in 161 statement that the first petitioner has purchased the rice bags, as loan. It is further submitted that second petitioner is the wife of the first petitioner and she never had any occasion to meet the second respondent or to participate in the transaction held between the first petitioner and the second respondent and she has been falsely implicated in the criminal case and therefore, the learned counsel prays to quash the entire proceedings in C.C.No.79 of 2015.

3. The learned Government Advocate (Criminal Side) appearing for the first respondent-Police would submit that the witnesses have clearly spoken that the first petitioner has purchased the rice bags and though sufficient time was given for repayment of the amount, the petitioners/accused did not repay the amount and hence, the complaint lodged by the defacto complainant against the petitioners/accused was taken on file by the respondent-Police and the learned District Munsif-cum-Judicial Magistrate, Kodumudi has taken the case on file as C.C.No.79 of 2015. Hence, the learned Government Advocate prays for dismissal of this Criminal Original Petition.

4. Heard the learned counsel for the petitioners and the learned Government Advocate (Criminal Side) for the first respondent and perused the materials available on record.

5. The defacto complainant is the trader of selling rice. The petitioners have also engaged in the business of selling rice and they approached the defacto complainant for purchase of rice on 07.01.2014 and purchased 436 bags of different variety of rice worth of Rs.6,27,010/-. Subsequently, the first petitioner could not repay the amount, hence, he initiated Insolvency Proceedings in I.P.No.16 of 2014 before the learned Sub Court, Tiruchengode against all his creditors, including the second respondent herein. The said I.P.No.16 of 2014 was taken on file on 12.06.2014 and the second respondent was set exparte in the said I.P. on 10.09.2014, and now the case is pending against other contesting respondents. During the pendency of I.P.No.16 of 2014, the defacto complainant has lodged the complaint 12.03.2015, which was registered as Crime No.42 of 2015, for the alleged purchase took place on 07.01.2014.



6. According to the learned Government Advocate (Criminal Side) though sufficient time was granted by the defacto complainant to the petitioners for repayment of the rice bags purchased, the petitioner did not repay the amount and hence, the complaint lodged by the second respondent was taken on file.

7. It is to be noted that in order to realize the due to the complainant/ second respondent, the complainant had approached the criminal court, short circuiting or avoiding civil proceedings, though prima facie it appears, it is an ordinary business transaction between the parties, not involving any offence punishable under penal law. Even as per the statement recorded under Section 161 of Cr.P.C., it could be seen that the defacto complainant admitted that he sold to rice bags to the petitioners as 'loan'.

8. By going through the complaint, dated 04.06.2015, I am unable to find out any materials, prima facie, even disclosing the requirements for 420 I.P.C. Under the above said circumstances, it is to be held that the respondent/complainant had chosen the short circuited way to realise the amount, converting a civil case into a criminal one, and therefore, invoking the inherent jurisdiction under Section 482 Cr.P.C., the proceedings in C.C.No.79 of 2015 should be quashed.

9. The learned trial Judge, without considering the facts in proper perspective and not even applying the mind, to find out whether any criminal offence is made out or not, took the case as such, which appears to be, in my view, incorrect. Under the above circumstances, I am inclined to allow this petition, quashing the proceedings against the petitioners.

10. In the result, this Criminal Original Petition is allowed and the proceedings against the petitioners in C.C.No.79 of 2015 is hereby quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1.The District Munsif-cum-Judicial Magistrate,
Kodumudi.



2.-do- thro'The Chief Judicial Magistrate, Erode.

3.The Inspector of Police,
Malayampalayam Police station,
Erode District.

4.The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.N.Manokaran, Advocate,sr.32085.

Ca(co)
krd 28/10

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