

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.24552 of 2015 and
CrI.M.P.No.1 of 2015

R.Arokiya Merry

...Petitioner

Vs.

1.The State Rep. by,
The Inspector of Police,
Thiruppathur Town Police Station,
Vellore District.

2.R.Magendiran

...Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pending on the file of the 1st respondent police namely Inspector of Police, Thiruppathur Town Police Station, Vellore District in Crime No.419 of 2015 and to quash the criminal proceeding.

For Petitioner : Mr.E.Kannadasan
For R1 : Mr.C.Iyyappa Raj,
Additional Public Prosecutor
For R2 : No Appearance

ORDER

This Criminal Original Petition has been filed to quash the FIR in Crime No.419 of 2015 pending on the file of the 1st respondent.

2.The case is that the 2nd respondent, from the year 1985, was living in the State of Gujarat and having a lorry booking office. The 2nd respondent is none other than the brother-in-law petitioner. The 2nd respondent used to visit his native on occasions, at that time, the petitioner asked the defacto complainant to send money through ICICI Bank, Tirupathur, in which an account was maintained and informed him that she shall invest the money in buying property. Believing the representation, from the year 2003 to 2009, the 2nd respondent

sent a sum of Rs.7 lakhs to the petitioner's bank account. Thereafter, the petitioner informed the 2nd respondent about the sale of Tirupathur Housing Board Flats for Rs.10 lakhs and asked him to arrange another Rs.3 lakhs. Believing the representation, the 2nd respondent withdrew Rs.3 lakhs from ICICI bank and handed over to the petitioner. Further, the petitioner showing concern on the defacto complainant, informed him that she would select a bride for him and soon make arrangement for his marriage. The petitioner failed to purchase the flat and also in arranging for his marriage. When the 2nd respondent, asked for return of money, the petitioner questioned the 2nd respondent when he sent money to her. Hence, the 2nd respondent lodged a complaint to the 1st respondent on 21.05.2015, who failed to take any action, thereafter, he filed a private complaint before the learned Judicial Magistrate No.I, Thirupathur along with the proof of transactions of money to the account of the petitioner. On verification of genuineness of the complaint, the learned Judicial Magistrate No.I, Thirupathur, forwarded the complaint under Section 156(3) to the 1st respondent, who on receipt of the same registered an FIR in Crime No.419 of 2015 for offence under Section 420 and 409 IPC. Challenging the same, present quash petition.

3.The contention of the learned counsel for the petitioner is that the 2nd respondent is none other than the brother-in-law of the petitioner. The complaint forwarded by the learned Judicial Magistrate No.I, Thirupathur, is only, to verify the genuine of the complaint, but the 1st respondent has, mechanically, registered an FIR against the petitioner. He further contended that the 2nd respondent did not approach the Court with clean hands. In the complaint, the 2nd respondent had not stated the place of occurrence, manner of occurrence and date of occurrence and on which date what money was sent. Except for bald allegations that the money was sent, there is no material to substantiate the averments of the 2nd respondent.

4.He further contended that the petitioner's daughter Ashmitha and Alosiya, filed a civil suit against the petitioner, her husband and wife of the 2nd respondent in O.S.No.4 of 2012 with regard to sale of property by the petitioner to the 2nd respondent on 06.05.2010 and to set aside the sale deed dated 10.11.2009 and 06.05.2010 as null and void. The petitioner's daughter claimed 2/3 share in the property, which is an inherited property, the learned District Munsif-Cum-Judicial Magistrate, Pochampalli, decreed the suit in favour of the petitioner's daughters by judgment dated 23.12.2014. As a counter blast, the above complaint has been filed by the 2nd respondent, suppressing these facts. Further, the daughters of the petitioner, had lodged a complaint against the 2nd respondent on 25.04.2015, for which CSR in No.129 of 2015 was assigned. To

circumvent and stall the investigation on the complaint given by the petitioner's daughters, the above case has been initiated. Lastly, the learned counsel for the petitioner submitted that the dispute raised by the 2nd respondent is purely a civil dispute, it has been given a criminal colour to implicate the petitioner.

5.He further submitted that according to the 2nd respondent, the alleged occurrence had taken place during 2003-2009, but the complaint has been lodged only in the year 2015, with a delay of seven years and no reason has been given for such delay. Due to initiation of the above case, the petitioner being a retired School Head Master, she is put to irresistible loss of fame and undergoing untold misery. Hence, prayed for quashing of FIR.

6.The learned Additional Public Prosecutor appearing for the 1st respondent submitted that immediately, on registration of FIR, the petitioner approached this Court and obtained an interim stay during 2015. Only on previous occasion, by order dated 10.07.2020, this Court had clarified, no stay is in force. Now the 1st respondent has commenced the investigation. The contention of the petitioner that aggrieved over the judgment in O.S.No.4 of 2012, the complaint has been lodged, is not proper and correct. The suit was a collusive suit. The plaintiffs, therein, are none other the daughters of the petitioner. The petitioner and her husband are defendants 1 and 2 and wife of the 2nd respondent is 3rd defendant. In the civil suit, the petitioner as well as her husband remained exparte and their daughters were allowed to get back the property, which was sold by the petitioner on 06.05.2010. It is pertinent to note that the disputed property was sold by petitioner's husband to the petitioner on 10.11.2009, thereafter, the petitioner executed a sale deed in favour of the 2nd respondent. The petitioner was working as Head Master in a school and she had earnings and with that earnings, she had purchased the property from her husband. The suit is no way connected to the issues involved in the present complaint. The petitioner has not denied the fact of the 2nd respondent deposited various amounts during the period 2003-3009 in her ICICI Bank account No.613601501430 and she has withdrawn the same. Further, a sum of Rs.3 lakhs, who withdrawn from the 2nd respondent bank account and handed over to the petitioner. The 2nd respondent produced the bank statement in proof of transaction. These facts are to be verified during the investigation and the veracity or otherwise of these documents and the claim of the petitioner have to be looked into. A prima facie materials are available to proceed with the investigation. Further, the learned Judicial Magistrate No.I, Thirupathur, forwarded the complaint and directed the 1st respondent to register an FIR.

7.This Court on perusal of the available records, the petitioner has made a representation to the 2nd respondent to send money for purchasing Housing Board Flats. Believing the same, the 2nd respondent during the year 2003-2009, has sent a sum of Rs.10 lakhs to the petitioner's bank account No.613601501430 (ICICI Bank, Thirupathur). But, she failed to act promised by her. Further, the points raised by the learned counsel for the petitioner are factual in nature and this Court is not in a position to appreciate these facts and it is the investigating officer who has to consider the same in the course of investigation on its own merits and in accordance with law. This Court does not want to interfere with the investigation at this stage and it is left open to the petitioner to raise all the contentions before the investigating officer.

8.In view of the above, this Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vv2

To

1.The Inspector of Police,
Thiruppathur Town Police Station,
Vellore District.

2.The Public Prosecutor,
High Court, Madras.

Cr1.O.P.No.24552 of 2015

EV(CO)
KKV/07/01/2021
KKV/04/02/2021

WEB COPY