

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.No.9490 of 2013
and
MP.No1 of 2013

1.Adhavan

2.Ganesan

3.Arun Petitioners/Accused

Vs.

Shanmuga Sundaram Respondent /Complainant

Prayer:

Petition filed under Section 482 of Cr.P.C., seeking to call for the entire records in C.C.No.146 of 2011 on the file of the Judicial Magistrate No.IV, Salem and quash the same.

For Petitioner : Mr.P.Jagadeesan

For Respondent : No Appearance

ORDER

This criminal original petition has been filed seeking to call for the records in C.C.No.146 of 2011 on the file of the Judicial Magistrate No.IV, Salem and quash the same.

2. The case of the prosecution is that the first petitioner was working as a Manger of Salem Urban Cooperative Bank, Dhadagapatti Branch, Salem. The petitioners 2 and 3 are Jewel Appraisers working in the said Bank. The respondent / defacto complainant, a customer of the Bank had obtained Jewel loan in the year 2006 and he filed a private compliant against the petitioners for the alleged offences under Sections 193, 196, 379, 420, 201 and 203 of IPC. The case of the defacto complainant is that the complainant obtained jewel loan in the year 2006 and the Bank officials sent a notice for the recovery of the loan amount on 06.09.2007. In pursuant of the said summon, the respondent /defacto complainant went to the said

Bank and paid the entire amount of Rs.18,129/- by pledging the same of his jewels in simultaneous transactions to adjust the loan amounts. While so, the 3rd petitioner who was acting as jewel appraiser on that day and not being a permanent staff in the said branch, had tried to replace the gold chain with fake chain. When the complainant asked about the same, the 3rd petitioner shouted that the complainant was trying to pledge fake chain with the bank. All the three petitioners joined together and gave a false complaint against the complainant for the offence under Section 420 of IPC before the Annadhanapatti Police and the police registered FIR in Cr.No.1085 of 2007. After completion of the investigation, the Investigation Officer filed a charge sheet against the complainant for the offence under Section 420 of IPC and case was taken on file in C.C.No.39/2008 and all these petitioners were cited as witnesses. Thereafter the case ended in acquittal after which this private complaint has been filed by the respondent / defacto complainant. Challenging the said complaint in C.C.No.146 of 2011, this present petition has been filed by these petitioners.

3.The learned Counsel appearing for the petitioner contended that the present private complaint preferred by the respondent is only a counter blast to the original complaint preferred by the petitioners against the respondent which was taken on file by the learned Magistrate -IV, Salem, in C.C.No.39 of 2008.

4.The Learned Counsel for the petitioners submitted that the respondent was a customer of the the Urban Co-Operative Bank, Salem and in order to discharge his loan liabilities, the respondent approached the bank and offered to pledge his jewels. The third respondent who was working as an appraiser found that the jewels offered by the respondent was fake. Pursuant to the same a complaint was preferred against the respondent which was tried from the learned Magistrate but the case ended in acquittal with the Court giving him the benefit of doubt. However, in order to extract revenge on the petitioners, private complaint has been preferred.

5. The learned Counsel for the petitioner drawing the attention of this Court to the ingredients of Section 406 of IPC and substantiated that the said averments are not attracted to the facts of the present case. The first respondent is now a retired employee and further he should not be allowed to undergo the ordeal of trial at this point of time. The learned Counsel drew the attention of this Court to the fact that in the complaint, the respondent has stated that the petitioners tried to replace the pledged jewels weighing 37.00 grams with fake Jewels weighing 58 grams, which switch over of the jewels is not

at all possible, as the same is done in an open place in view of the public/person pledging the jewels.

6. The learned counsel appearing for the petitioners prayed that the petitioners may be saved from undergoing the ordeal of trial and the case registered against them should be quashed.

7. Though notice was sent to the respondent however there is no representation. Hence on direction of this Court the name of the respondent is printed in the cause list. even today, there is no appearance of the respondent in person or through counsel. Hence this Court is proceeding to decide the case on merits based on the materials available on record.

8. This Court heard the submission made by the learned counsel appearing for the petitioners, and perused the materials available on record.

9. A perusal of the materials available on record reveal that the complaint at the behest of the respondent is nothing but an attempt to seek revenge against the petitioners for the complaint given against the respondent relating to pledging of fake gold jewels. Though the said case, ultimately ended in acquittal before the Judicial Magistrate No.IV, Salem, in C.C. No.39/08, the present complaint has been preferred against the petitioners. It is seen from the records that the judgment of the court below acquitting the respondent was passed on 15.3.10, however, curiously, almost after 9 months, on 24.1.11, the present complaint has been filed against the petitioners. If really the case of the respondent that the 3rd petitioner had tried to switch the jewels with fake ones for which the other petitioners helped him, nothing prevented the respondent from lodging a counter complaint with the police. However, the respondent, for reasons best known, has not resorted to the prudent approach, but had allowed the case against him to come to its conclusion and, after 9 months from the said date, has preferred the complaint against the petitioners.

10. The act of the 3rd petitioner in questioning the authenticity of the jewels to be pledged by the petitioner, which culminated in the complaint against the petitioner and the case being taken on file and ending in acquittal, merely to seek revenge against the petitioners for initiating the complaint, the present complaint has been filed by the respondent.

11. Further, if really there is some substance in the complaint made by the respondent, definitely, he would either have appeared through counsel or in person to present his case.

Even after opportunities, the respondent has not thought it fit to appear before the court. The petition for quash has been filed in the year 2013 and case before the trial court has been initiated in the year 2011. Even after a lapse of almost eight years, the respondent has not come forward to present his case only leads this Court to the logical inference that the present complaint is nothing but an attempt on the part of the respondent to extract revenge against the petitioners. Allowing this case to proceed before the trial court, in the above facts and circumstances, would be nothing but travesty of justice and the petitioners, who are age old persons, should not be made to suffer the ordeal of trial at this distant point of time, more so, when the respondent is not ready and willing to appear before this Court and defend his case. This merely demonstrates the mind of the respondent, which is only to the extent of putting the petitioners in hardship and not otherwise. The bona fides of the respondent as regards the complaint itself raises a doubt in the mind of this Court. If the prosecution is allowed to continue, it would not only be detrimental to the interests of the petitioners, but would be a travesty of justice and, therefore, the same should be nipped in the bud.

12. For the reasons aforesaid, this petition is allowed and C.C. No.146 of 2011 on the file of the learned Judicial Magistrate No.IV, Salem, is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

jrs

To

1.The Judicial Magistrate No.IV,
Salem

2.The Chief Judicial Magistrate,
Salem.

+1cc to M/s P.Jagadeesan, Advocate, sr 9901

Cr1.O.P.No.9490 of 2013

SV(CO)
GS(20/05/2020)