

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.6658 of 2020
and Crl.MP.No.3664 of 2020

Maruthai,
S/o.Krishnamoorthy,
No.9, Mangankula Street,
Srimushnam & Taluk,
Cuddalore District.

... Petitioner

Vs.

1. The State,
Rep by the Inspector of Police,
District Crime Branch,
Cuddalore, Cuddalore District,
Tamilnadu.

2. A.Veeravel,
S/o. Anandan,
No.18, South Car Street,
Srimushnan & Taluk,
Cuddalore District,
Tamilnadu.

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records of the first respondent pertains to the impugned FIR in Crime No.9 of 2020 on the file of the first respondent police and quash the same.

For Petitioner : Mr.V.Prakash, Senior Counsel
For Mr.P.R.Thiruneelakandan

For Respondents

For R1 : Mr.S.Karthikeyan
Additional Public Prosecutor
For R2 : Mr.C.Prakasam

ORDER

This petition has been filed to quash the FIR in Crime No.9 of 2020 on the file of the first respondent police, registered for the offences under Sections 294(b), 406, 420 and 506(2) of IPC, as against the petitioner.

2. Mr.V.Prakash, learned Senior Counsel appearing for the petitioner would submit that the FIR does not disclose the commission of any offence as alleged by the second respondent herein. Even according to the second respondent, the alleged occurrence was taken place in the month of March to October, 2017 and the complaint lodged only on 11.03.2020. Therefore there is absolutely no explanation for the belated complaint lodged by the second respondent. Even then, the first respondent mechanically without even conducting any enquiry registered the FIR.

2.1. He further submitted that there are totally three accused in which the petitioner is arrayed as first accused. The entire allegations are civil in nature, since even according to the second respondent the petitioner borrowed money and did not repay the said amount. Therefore, all the allegations are civil in nature and it does not constitute any offence under Sections 406 and 420 of IPC. In fact, in the complaint lodged by the petitioner herein, the second respondent is arrayed as accused in Crime No.3 of 2019 on the file of the District Crime Branch, Ariyalur. In the said case, the second respondent filed anticipatory bail petition and also quash petition to quash the FIR in Crime No.3 of 2019 before this Court in CrI.O.P.No.25933 of 2019 and CrI.O.P. No.30409 of 2019 respectively and both the petitions were dismissed by this Court.

2.2. In fact, the second respondent also filed a suit in O.S.No.220 of 2019 on the file of the District Court, Cuddalore and in the plaint there is absolutely no whisper about the allegations made in the FIR. In fact, in the anticipatory bail petition and the quash petition filed by the second respondent in Crime No.3 of 2020 there is absolutely no whisper about the present transaction as alleged by the second respondent. Even according to the second respondent, the alleged occurrence took place in the the month of March to October 2017 and much earlier to the anticipatory bail and quash petition filed by the second respondent herein.

2.3. Insofar as other offences under Sections 294(b) and 506 (ii) of IPC are concerned, there is no iota of evidence to attract the offence and there is no absence words uttered by the

petitioner and there is no date and time of crime mentioned by the second respondent. Since the suit filed by the second respondent was dismissed and immediately after dismissal of the suit, the present complaint has been lodged as against the petitioner herein. It is nothing but to achieve whatever the second respondent failed to achieve in the civil suit and turned around try to achieve by way of false complaint. Therefore, the complaint cannot be sustained as against the petitioner and it is liable to be quashed. To support of his contention, the learned Senior Counsel relied upon the following judgments :-

i) 1992 suppl. (1) SCC 335 - State of Haryana and others versus Bhajan Lal and others.

ii) Judgment dated 30.01.2020 passed in CrI.A.No.138 of 2020 in the case of Ahamed Ali Quraishi and anr Vs. State of UP and anr.

3. Per contra, the learned counsel appearing for the second respondent would submit that the petitioner and two others are doing business in the name and style of Kavitha Enterprises and Varaga steels. They borrowed a sum of Rs.33,85,500/- during their business. The entire amount have been transferred directly to their accounts on 20.02.2017 and 27.03.2017. When the second respondent asked for return of the amount, they assured that they will purchase the material for the new business to be started by the second respondent at Viruthachalam. While being so, in the month of October 2017, again the accused person assured that all the materials would be purchased by them for the business to be started by the second respondent at Viruthachalam. Believing the words, again on 23.10.2017, 27.10.2017, 31.10.2017, 06.11.2017 and 23.02.2018, total sum of Rs.18,50,000/- have been transferred to the accused accounts. Thereafter, they have purchased the material worth about Rs.7,00,000/- and assured that they will return the remaining balance amount, thereby the accused persons are liable to pay a sum of Rs.43,35,500/-.

3.1. Further they also cheated so many persons and banks as such, their properties were also under auction proceedings. While being so, when the second respondent asked them to return the money, the petitioner abused the second respondent with filthy language and also threatened him to kill and dire consequences. Therefore, there are ingredients to attract the offences under Sections 294(b), 406, 420 and 506(2) of IPC, as against all the accused persons. All the grounds raised by the learned Senior Counsel appearing for the petitioner are mixed question of fact and it cannot be considered that too under Section 482 of Cr.P.C., to quash the FIR. It is only the FIR stage and it cannot be killed on its birth. Therefore, he sought for dismissal of the quash petition.

4. The learned Additional Public Prosecutor appearing for the first respondent police would submit that there are so many disputes between the second respondent and the accused persons, in which the petitioner is liable to pay a sum of Rs.45,35,500/- to the second respondent. When it was questioned by the second respondent, all the accused persons have threatened the second respondent with dire consequence and also abused him with filthy language. Therefore, the first respondent rightly registered the case as against the petitioner and two others for the offences punishable under Sections 294(b), 406, 420 and 506(2) of IPC. As far as the petitioner is concerned, he arrayed as A1 and all the accused persons are having specific over-tact on the complaint lodged by the second respondent. Further the FIR is under investigation and it cannot be quashed in threshold. He also relied upon the judgment of the Hon'ble Supreme Court of India passed in CrI.A.No.255 of 2019 dated 12.02.2019 in the case of Sau. Kamal Shivaji Pokarnekhar vs. the State of Maharashtra & ors.

5. Heard Mr.V.Prakash, learned Senior Counsel appearing for the petitioner Mr.C.Prakasam, learned counsel appearing for the second respondent and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the first respondent police.

6. There are totally three accused in Crime No.9 of 2020, in which the petitioner is arrayed as A1. On the complaint lodged by the second respondent, the first respondent police registered a case in Crime No.9 of 2020 for the offences punishable under Sections 294(b), 406, 420 and 506(2) of IPC, alleging that the accused persons have borrowed money from the second accused and they also assured that they will purchase the material for the business to be started by the second accused at Viruthachalam. Thereafter, again the petitioner received a sum of Rs.18,50,000/- to purchase the material for the business to be started by the second respondent. After receipt of the entire amount, they purchased only for the value of Rs.7,00,000/- and they did not return the remaining amount, thereby they cheated the second respondent.

7. On perusal of the documents revealed that the second filed suit as against the petitioner herein in O.S.No.220 of 2019 on the file of the District Court, Cuddalore for recovery of money to the tune of Rs. 31,97,873/-. The suit was filed by the second respondent on 19.07.2019. It is seen from the averments made in the plaint, there is absolutely no whisper about the allegations made in the present impugned FIR. The complaint lodged by the second respondent with regard to the money transaction between the accused persons and the second

respondent on 20.02.2017 and in the month of October 2017. Even then the second respondent had mentioned in the plaint about the money transaction took place in the year 2016 and filed suit for recovery of money.

8. On 09.09.2019, the petitioner also lodged complaint as against the second respondent and another for the offences under Sections 120B, 419, 420, 409, 424, 465, 466, 468, 477 A, 506(ii) of IPC in Crime No.3 of 2019 and the same is pending for investigation on the file of the Inspector of Police, District Crime Branch, Ariyalur District. In fact, the second respondent filed anticipatory bail petition before this Court in CrI.O.P.No.25933 of 2019 and in the said anticipatory bail petition he did not even whisper about the allegations made in the present FIR. The second respondent also filed quash petition in CrI.O.P.No.30409 of 2019 to quash the FIR registered as against him in Crime No.3 of 2019 before this Court and this Court by an order dated 17.02.2020 dismissed the quash petition. In the quash petition also the second respondent did not even whisper about the allegations made in the present FIR.

9. After dismissal of the quash petition, the petitioner caused legal notice dated 02.03.2020 to the second respondent and also to the first respondent to call upon the first respondent not to entertain any complaint of the second respondent with regard to the civil claim. The said notice was duly received by the second respondent and in fact, the second respondent issued reply notice dated 07.03.2020 denying the averments made in the legal notice issued by the petitioner. Therefore, the petitioner also filed writ petition in W.P.No.6417 of 2020 before this Court for not to harass, as against the first respondent and two others on the false complaint lodged by the second respondent herein. Immediately after dismissal of the quash petition filed by the second respondent on 17.02.2020, the second respondent lodged the present impugned complaint with the above said allegations as against the petitioner and two others. After receipt of the notice issued by the petitioner and after filing of the writ petition by the petitioner, the first respondent registered the FIR in on 11.03.2020 in Crime No.9 of 2020 for the above said offences. Therefore the present impugned FIR is nothing but clear abuse of process of law and only initiated with malaise prosecution, it has been lodged by the second respondent.

10. Apart from that, the entire allegations are civil in nature and do not constitute any of the offence as alleged in the FIR. In this regard the learned Senior Counsel appearing for the petitioner relied upon the judgment dated 30.01.2020 passed in CrI.A.No.138 of 2020 in the case of Ahamed Ali Quraishi and anr Vs. State of UP and anr, as follows :-

"10. Before we enter into facts of the present case and submissions made by learned counsel for the parties, it is necessary to look into scope and ambit of Inherent Jurisdiction which is exercised by the High Court under Section 482 Cr.P.C. This Court had occasion to consider the scope and jurisdiction of Section 482 Cr.P.C. This Court in State of Haryana and others versus Bhajan Lal and others, 1992 suppl. (1) SCC 335, had elaborately considered the scope and ambit of Section 482 Cr.P.C. Article 226 of the Constitution in the context of quashing the criminal proceedings. In paragraph 102, this Court enumerated seven categories of cases where power can be exercised under Article 226/Section 482 Cr.P.C. by the High Court for quashing the criminal Proceedings. Paragraph 102 is as follows:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an

investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a noncognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/o where there is specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

11. The Hon'ble Supreme Court of India held that the Court can exercise of the inherent powers under Section 482 of the Code, where a criminal proceeding is manifestly attended with malafide and where the proceeding is maliciously instituted with an ulterior motive. Having been failed before this Court in the quash petition and after receipt of the notice issued by the petitioner, the second respondent lodged the complaint and the first respondent without even seeing the allegations made in the complaint mechanically registered the same. Therefore, the present impugned FIR is nothing but clear abuse of process of

law and it cannot be sustained as against the petitioner further.

12. In view of the above discussion, this Criminal Original Petition stands allowed and the FIR in Crime No.9 of 2020 on the file of the first respondent police, is hereby quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Inspector of Police,
District Crime Branch,
Cuddalore, Cuddalore District,
Tamilnadu.
2. The Public Prosecutor,
Madras High Court,
Chennai.

CRL.O.P.No.6658 of 2020
and CrI.MP.No.3664 of 2020

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