

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.01.2020

PRONOUNCED ON : 04.02.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

Crl.OP.No.12487 of 2019

and

Crl.MP.Nos.6499 and 13816 of 2019

1. Prabhavathy
2. K.Bhaktavachalam ... Petitioners

Vs.

1. State by:
Inspector of Police (Crime)
R-3, Ashok Nagar Police Station,
Ashok Nagar, Chennai.
(Crime No.1237 of 2017)
2. Pon Singh ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records in C.C.No.11412 of 2018 on the file of the learned XVII Metropolitan Magistrate at Saidapet Chennai and quash the same.

For Petitioners : Mr.K.Vijayaragavan
For Respondents : Mr.M.Mohamed Riyaz
Additional Public Prosecutor for R1

सत्यमेव जयते
Balaji Sankara Moorthy for R2

ORDER

This petition has been filed by the accused Nos.1 and 2 to quash the proceedings against them in C.C.No.11412 of 2018 on the file of the learned XVII Metropolitan Magistrate at Saidapet, Chennai.

2. The second respondent herein has lodged a complaint before the first respondent stating that he took the premises of

the first petitioner for rent in the month of February 2015 for a period of one year and agreed to pay a sum of Rs.35,000/- as monthly rent and also paid a sum of Rs.4,00,000/- as advance. The first petitioner has received a sum of Rs.1,00,000/- towards maintenance of the building. Thereafter the first petitioner made a request with the second respondent to lend a sum of Rs.5,00,000/- to meet her personal expenses. Considering her request, the second respondent borrowed the said amount from one Seth at Broadway, Chennai and paid to the first petitioner. He further stated that during March 2015, the first petitioner again made a request to lend another sum of Rs.5,00,000/- for setting up a beauty parlour and fruit shop at Madipakkam and accordingly, the second respondent has paid another sum of Rs.5,00,000/-. He vacated the premises during December 2016 after expiry of tenancy period. At that time, he demanded to repay the advance amount, but, the first petitioner has stated that she will pay the amount after the new tenant comes in, till date, the advance of Rs.4,00,000/- has not been re-paid by the first petitioner and thereby cheated the second respondent. In the month of October 2017, the second respondent went to the house of the first petitioner to ask for money, at that time, the second petitioner who is the father of the first petitioner told the second respondent that the first petitioner will re-pay the amount in the month of November 2017. Hence, in the month of 2017, the second respondent has asked the second petitioner to pay the amount and at that time, he used filthy language against the second respondent and criminally intimidated him. Further, the first petitioner already issued three cheques to discharge the aforesaid debt, but, those cheques were dishonoured and hence, the second respondent has lodged a complaint before the first respondent.

3. Based on the said complaint, the first respondent has registered an FIR in Crime No.45 of 2018 for the offences punishable under Sections 420, 106, 294(b) and 506(i) of IPC, after investigation, the first respondent laid a charge sheet and based on the same, the XVII Metropolitan Magistrate at Saidapet, Chennai has taken the case on file in C.C.No.11412 of 2018 and issued summons to the accused Nos.1 and 2 and after receipt of the summons, they have filed the present petition to quash the proceedings against them.

4. Mr.K.Vijayaragavan, the learned counsel for the petitioners has submitted that at the time of entering the tenancy agreement, the second respondent has paid a sum of Rs.1,50,000/- only towards advance and he agreed to pay only Rs.20,000/- as monthly rent. After entering into the tenancy agreement, the second respondent maintained cordial and friendly

relationship with the first petitioner upon which, the second respondent has come to know about the beauty parlour business and fruit shop business ran by the first petitioner and expressed his intentions of becoming a partner in the business during July 2015. He further submitted that the first petitioner refused to accept the offer made by the second respondent due to some personal reasons. Later, the first petitioner, due to some urgency, made a request to the second respondent to refer some financier to borrow a sum of Rs.5,00,000/- to meet her immediate expenses. The second respondent lent a sum of Rs.5,00,000/- at the rate of 36% interest per annum to the first petitioner, at the time of lending money, the second respondent obtained signatures in one blank cheque and in two blank demand promissory notes as security. From, thereon, the first petitioner was regularly paying Rs.15,000/- per month towards the interest to the second respondent. He further submitted that taking advantage of the fact that the first petitioner borrowed money, the second respondent started behaving differently and involved in in-decent and immoral activities in the rented premises causing nuisance to the neighbors and hence, the first petitioner during mid of the year 2016 started receiving repeated complaints from the other occupants and asked the second respondent to desist from such activities or to vacate the premises, but, the second respondent continued the tenancy and vacated the premises during the end of December 2016 only. At that time of handing over the vacant possession of the premises, the first petitioner returned an advance amount of Rs.1,50,000/- to the second respondent. The second respondent asked the first petitioner to re-pay the principal amount by the end of January 2017, whereas the first petitioner requested for time till March 2017. The first petitioner was regularly paying interest till February 2017. During March 2017, the first petitioner re-paid a sum of Rs.5,00,000/- to the second respondent, whereas, the second respondent demanded further sum of Rs.2,00,000/- stating some interest has to be paid. The first petitioner initially refused but the second respondent posed severe threat to take legal action by using the documents signed by her. Hence, the first petitioner negotiated and arrived at a one time settlement to pay Rs.1,00,000/-. After paying the said amount, during April 2017, she demanded the second respondent to return the documents, but, the second respondent has stated that the documents were misplaced and he will return after tracing out the same.

5. The learned counsel for the petitioner has further submitted that the second respondent suddenly during December 2017, started demanding a sum of Rs.5,00,000/- and entered into

quarrel with the petitioners using filthy language and lodged a false complaint. He further submitted that the transaction is purely a money transaction and if the cheques were dishonoured, the second respondent should have filed a complaint under Section 138 of the Negotiable Instruments Act or he should have filed a suit before the Civil Court for recovery of money and instead of that he gave a complaint before the first respondent. He further submitted that the allegations made in the charge sheet is purely civil in nature. He further submitted that the petitioners have not committed any offence and hence, he prayed to quash the proceedings against the petitioners in C.C.No.11412 of 2018 on the file of XVII Metropolitan Magistrate at Saidapet, Chennai. In support of the aforesaid contentions, the learned counsel for the petitioners has relied upon the decision in "Joseph SalvaRaja Vs. State of Gujarat and Others (2011) 7 SCC 59".

6. Per contra, Mr.Balaji Sankara Moorthy, the learned counsel for the second respondent has submitted that at the time of entering a lease agreement dated 01.12.2015 as per the demand made by the first petitioner, the second respondent has paid a sum of Rs.4,00,000/- as refundable security deposit and also it was agreed to pay a monthly rent of Rs.35,000/-. He further submitted that the second respondent has paid a rent copy. He further submitted that the first petitioner has received a sum of Rs.1,00,000/- to carry out some repairs in house and she promised to reimburse the same. Thereafter, in the month of February 2015, the first petitioner has borrowed a sum of Rs.5,00,000/- from the second respondent for her urgent expenses. In March 2015, she further borrowed a sum of Rs.5,00,000/- from the second respondent. In the month of April 2015, she borrowed another sum of Rs.5,00,000/- and agreed to re-pay the total sum of Rs.16,00,000/- within few months and also executed promissory notes and issued cheques as security which were later dishonoured upon presentation for want of funds. He further submitted that after expiry of lease agreement, the second respondent has vacated the premises and asked the first petitioner to re-fund the advance amount and also pay the aforesaid amount, but, she did not pay any amount. He further submitted that in October 2017, the second respondent went to the house of the first petitioner and asked to re-pay the aforesaid amount and at that time, the second petitioner informed the second respondent that the amount will be paid within a month ie., November 2017 and accordingly, the second respondent approached the second petitioner in November 2017 to collect the money and at that time, the second respondent criminally intimidated the second respondent with unparliamentary words. He further submitted that the first

petitioner has cheated the second respondent and the second petitioner has criminally intimidated by using filthy language and hence, the second respondent has lodged a complaint before the first respondent and based on the same, an FIR was registered and after investigation charge sheet was filed. He further submitted that the averments made in the FIR and also the charge sheet would prima facie show that the petitioners have committed the offences punishable under Sections 420, 406, 294 (b) and 506(1) of IPC. Therefore, he prayed to dismiss the petition.

7. In support of the aforesaid contentions, the learned counsel for the second respondent has relied upon the following decisions:

(i) Trisuns Chemical Industry Vs Rajesh Agarwal and Others (1999) 8 Supreme Court Cases 686

(ii) State of Karnataka Vs.M.Devendrappa and Another (2002) 3 SCC 89

(iii) Indian Oil Corporation Vs. NEPC India Ltd and Others (2006) 6 Supreme Court Cases 736

(iv) Sau.Kamal Shivaji Pokarnekhar Vs. The State of Maharashtra and Others 2019 SCC Online SC 182.

8. Mr.M.Mohamed Riyaz, the learned Additional Public Prosecutor who is appearing for the first respondent has adopted the arguments advanced by the learned counsel for the second respondent and he also prayed to dismiss this petition.

9. In the typed set of papers filed by the learned counsel for the second respondent, a xerox copy of agreement of lease which was said to have been entered between the first petitioner and the second respondent in the month of January 2015 has been enclosed. A perusal of the said agreement would show that the second respondent has paid a sum of Rs.4,00,000/- as security deposit. Further, it was agreed by the second respondent that he will pay a sum of Rs.20,000/- towards monthly rent and Rs.15,000/- towards Amenity Charges and in total a sum of Rs.35,000/- every month. So, it is clear that the petitioners' contentions that only a sum of Rs.1,50,000/- was paid towards advance and Rs.20,000/- towards monthly rent are not correct. Further, the first petitioner gave a letter to the Inspector of Police R3, Ashok Nagar Police Station, Ashok Nagar, Chennai 83 on 05.12.2017 admitting that she borrowed Rs.20,00,000/- from the second respondent three years ago agreeing to re-pay the

same with interest at the rate of 2%. She further stated that she will re-pay the said amount on or before 05.01.2018.

10. Further, the petitioner has filed CrI.OP.No.1703 of 2018 before this Court to direct the respondent police not to harass her and in that petition, she has stated that she borrowed a sum of Rs.12,00,000/- as hand loan for business development in the year 2012 from the second respondent herein agreeing to re-pay the same with interest at the rate of 36% and she has been paying 36% interest till the year 2013. But, she has not produced any material to show that she paid any interest. It is also to be pointed out that she had sent a lawyer's notice to the second respondent dated 18.11.2018 in which she has stated that in the month of October 2012, she received a sum of Rs.5,00,000/- from the second respondent and thereafter, she received another sum of Rs.5,00,000/- from him. She further stated that the second respondent offered a further sum of Rs.5,00,000/- and hence, she received the said amount also. She further stated that she has issued three cheques for a sum of Rs.5,00,000/- each and one cheque for Rs.30,000/- to the second respondent towards security. So the contentions of the petitioners that the second respondent had obtained signatures in blank promissory notes and blank cheques are not true. Further, in the said notice, she has stated that she repaid the said amount and for that also, there is no proof.

11. In Joseph SalvaRaja Vs. State of Gujarat and Others (cited supra) the Hon'ble Supreme Court, taking in to consideration of the facts and circumstances of that case, has held that the matter appears to be purely civil in nature and accordingly quashed the FIR.

12. (i) Trisuns Chemical Industry Vs Rajesh Agarwal and Others (cited supra) the Hon'ble Supreme Court has held that criminal prosecution for cheating cannot be thwarted merely because civil proceedings are also maintainable.

13. In State of Karnataka Vs.M.Devendrappa and Another (cited supra), the Hon'ble Supreme Court has held that inherent power of High Court should be exercised ex debito justitiae to prevent abuse of process of court. It should not be exercised to stifle legitimate prosecution. Further, it has held that the High Court should not assume the role of a trial court and embark upon an enquiry as to reliability of the evidence and sustainability of the accusation on a reasonable appreciation of such evidence. Further it has held that the said power should be exercised sparingly, with caution and circumspection.

14. In Indian Oil Corporation Vs. NEPC India Ltd and Others (cited supra), the Hon'ble Supreme Court has held that if allegations in the complaint, taken at their face value, disclose a criminal offence, complaint cannot be quashed merely because it relates to a commercial transaction or breach of contract for which civil remedy is available or has been availed.

15. In Sau.Kamal Shivaji Pokarnekar Vs. The State of Maharashtra and Others (cited supra) the Hon'ble Supreme Court has held that criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted.

16. In the complaint, the second respondent has clearly stated that the first petitioner has received the amount with an intention to cheat him. Further, the first petitioner has admitted in her lawyer's notice that she borrowed Rs.15,00,000/- from the second respondent and also issued cheques as security, but, she has taken a different stand in the present petition. Further, she denied the fact that she received Rs.4,00,000/- as advance but the lease agreement shows that she received Rs.4,00,000/- as advance. All these facts would prima facie show that there are materials to proceed against the first petitioner and hence, this court is not inclined to quash the proceedings against the first petitioner.

17. In so far as the second petitioner is concerned, he is the father of the first petitioner and he is aged about 78 years. Admittedly, he has not received any amount from the second respondent. The only allegation made against him in the charge sheet is that in the month of October 2017, the second respondent went to the house of the first petitioner to ask the amount and at that time, the second petitioner was there and he told him that the amount will be paid in the month of November 2017 and accordingly in the month of November 2017, he met the second petitioner and asked the amount and at that time, the second petitioner used the following words :

“ என்னை பார்த்து அசிங்கமாக டேய் தேவடியா மகனே என்று தகாத வார்த்தைகளால் பேசியும் கொலை செய்யக் கூட தயங்க மாட்டேன் என மிரட்டியும் எனக்கும் அவருக்கும் சம்மந்தம் இல்லை நீ போய் அவர்களிடமே வாங்கி கொள் என்று கூறியுள்ளார்”,

but, in the complaint which was lodged by the second respondent before the first respondent, he has not stated what are the words actually used by the second petitioner. In the complaint, he has stated that the second petitioner has scolded him with filthy language and also threatened him and apart from that he has not stated any other allegations against the second petitioner in the complaint. It appears that only with a view to rope the second petitioner in the above case, the second respondent has made certain allegations against him. Therefore, this Court is of the view that there is no material to proceed against the second petitioner. Accordingly, the proceedings against the second petitioner is liable to be quashed.

18. In the result, this criminal original petition is partly allowed in respect of the second petitioner alone. Accordingly, the proceedings against the second petitioner in C.C.No.11412 of 2018 on the file of the XVII Metropolitan Magistrate, Saidapet, Chennai are quashed. In so far as the first petitioner is concerned, this petition is dismissed. The trial court is directed to proceed against the first petitioner and dispose of the case in accordance with law. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS V)

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Sub Asst. Registrar

Vv

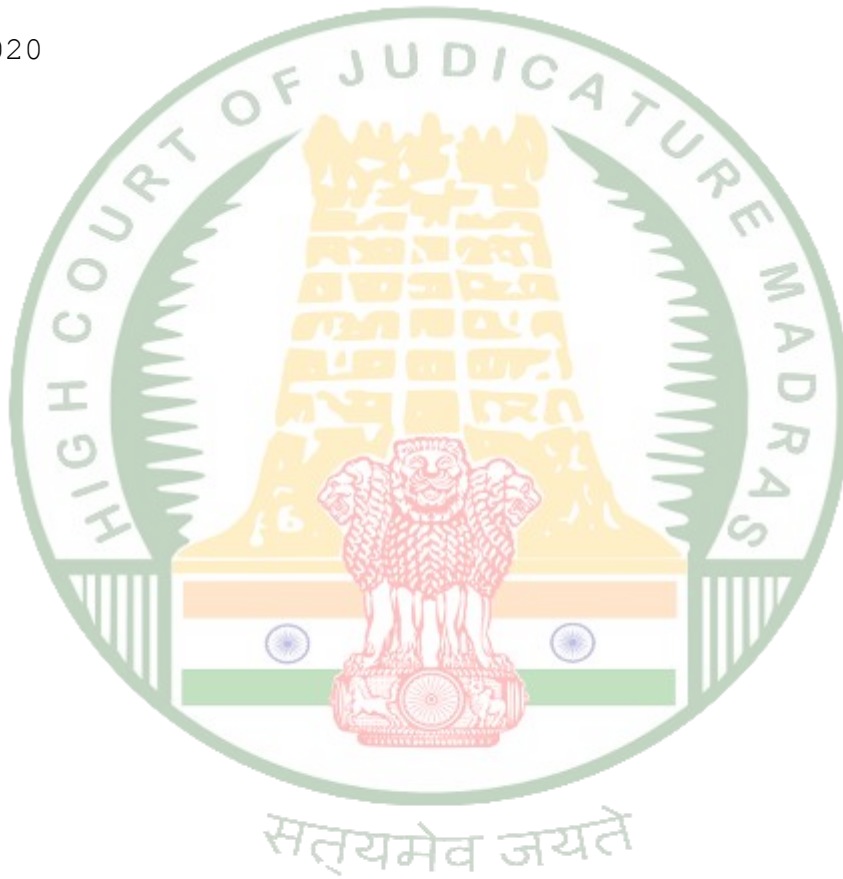
To

1. The XVII Metropolitan Magistrate,
Saidapet, Chennai.
2. The Inspector of Police (Crime)
R-3, Ashok Nagar Police Station,
Ashok Nagar, Chennai.
3. The Public Prosecutor,
Madras High Court,
Chennai.

+1 cc to Mr.J.Raja Rao Advocate sr8690
+1 cc to M/s.Balaji Sankaramoorthy Advocate sr8412

Crl.O.P.No.12487 of 2019
and
Crl.MP.Nos.6499 and 13816 of 2019

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