



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.12.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

Crl.O.P.(MD)No.15151 of 2020

Mrs.Gomathi

... Petitioner

vs.

1)The State,
The Inspector of Police,
Thallakulam Crime Police Station,
Madurai City.
In Crime No.2165 of 2019

2)Mrs.Ramani

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records pertaining to C.C.No.786 of 2020 on the file of the learned Judicial Magistrate No.II, Madurai, and quash the same as against the petitioner is concerned.

For Petitioner : Mr.M.Sheik Abdullah

For R1 : Mrs.S.E.Veronica Vincent
Govt Advocate(Crl.Side)

ORDER

This petition has been filed to call for the records pertaining to C.C.No.786 of 2020 on the file of the learned Judicial Magistrate No.II, Madurai, and quash the same as against the petitioner is concerned.

2.The case of the prosecution is that in respect of pharma business run by one Srikanth, Gurumoorthy/petitioner's husband and Gomathi/petitioner, they entered into an agreement with the 2nd respondent/defacto complainant on 03.10.2015 and based on which, the 2nd accused/Gurumoorthy pledged the house property deeds of the 2nd respondent with the Bank of Maharashtra, Madurai Nethaji Road Branch, and obtained loan of Rs.10,00,000/- in his name and out of the said amount, he gave loan of Rs.3,00,000/- to the 2nd respondent, for which, the 2nd respondent was paying Rs.6,000/- towards monthly interest to Gurumoorthy and paid Rs.96,000/- totally and obtained receipts therefor from Gurumoorthy. While so, the abovesaid accused persons had not paid the EMI for the above loan and the bank issued a japthi notice to the 2nd respondent and when the husband of the 2nd respondent went to the house of the accused 2 and 3 and questioned about the non payment of the loan amount, they abused him, hit and



thrown out him from the house. When the 2nd respondent approached the accused 1 and 2, they abused her in filthy language and made life threat and in this regard, she has given a complaint on 22.10.2018 before Tallakulam Police Station in CSR.No.1294/2018 and during enquiry, the accused 1 and 2 assured that they would pay the interest amount and will complete the loan before January 2019 and since the accused persons did not act as per their undertaking, the 2nd respondent has filed the present complaint and based on the same, FIR in Crime No.2165/2019 for the offences under Sections 406 and 420 IPC has been registered against the accused persons. The petitioner is A2 who is the wife of A1 in the FIR.

3.The learned counsel for the petitioner would state that the petitioner has been falsely implicated in this case and she is no way connected with loan transactions and she is neither the partner of the business concern nor any other transaction. The petitioner is a 60% physically challenged person and therefore, the allegation that she hit the husband of the defacto complainant and thrown him out of the house is not proved and the offences under Sections 420 and 406 IPC are not made out against this petitioner and the defacto complainant has lodged the complaint after 3 months. He would further state that the husband of the defacto complainant was examined as LW1 and he did not say anything about the petitioner and the alleged incident of hitting him by the petitioner as alleged by the defacto complainant in the FIR. Likewise, the witnesses LW3, LW4, LW6 and LW7 did not say anything about the petitioner. Thus, the learned counsel would pray to quash the FIR.

4.The learned Government Advocate(Crl.Side) would state that the defacto complainant has made specific allegations against the petitioner in the FIR and the same can be proved only in full-fledged trial and therefore would pray for dismissal of this petition.

5.Heard the learned counsel for the petitioner as well as the learned Additional Public Prosecuttor. In view of the order going to be passed, notice to the 2nd respondent is not necessary.

6.While invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court has also to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged, which has been echoed in the judgment of the Hon'ble Supreme Court by judgment dated 02.12.2019 in **Crl.A.No.1817 of 2019 in the case of M.Jayanthi vs. K.R.Meenakshi and another.**



7.Here in the present case, the complainant had made specific allegations against the petitioner in the complaint stating that when the husband of the 2nd respondent, who is an aged person, went to the house of the accused 2 and 3 and questioned about the non payment of the loan amount, they abused him, and the petitioner/A3 hit him and thrown out him from the house and therefore, the grounds raised in this petition can be gone into only in a full-fledged trial and the petitioner is at liberty to raise the grounds in this petition before the trial Court. Considering the facts and circumstance of the case, the personal appearance of the petitioner before the trial Court is dispensed with except during the dates on which, the learned Judicial Magistrate insists her appearance. The learned Judicial Magistrate No.II, Madurai, is directed to conclude the entire trial proceedings within a period of six months from the date of receipt of a copy of this order.

8.With the above direction, this Criminal Original Petition is disposed of. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1)The Judicial Magistrate No.II,Madurai.

2)The Inspector of Police,
Thallakulam Crime Police Station,Madurai City.

3)The Additional Public Prosecutor,
Madurai Bench of Madras High Court,Madurai.

Copy to:- The Registrar(Judicial) ,
Madurai Bench of Madras High Court,Madurai.

ORDER MADE IN

Crl.O.P. (MD)No.15151 of 2020

DATED : 18.12.2020