



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.07.2020

DELIVERED ON: 27.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE **R. PONGIAPPAN**

Crl.O.P.(MD)No.9767 of 2018

and

Crl.M.P.(MD) Nos.4344 & 4345 of 2018

1.Sundaresan @ Chinna Lakshmanan

2.Chitra

3.L.Alagappan

... Petitioners / Respondents

Vs.

R.Subramanian

... Respondent/ Petitioner

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records pertaining to the complaint in C.C.No.3 of 2018 on the file of the Judicial Magistrate, Devakottai and quash the same.

For Petitioners : Mr. G.Prabhu Raja Durai
for Mr.J.AnandKumar

For Respondent : Mr.N.Ravichandran

O R D E R

This Criminal Original Petition has been filed seeking the relief to call for the records pertaining to the complaint in C.C.No.3 of 2018, on the file of the Judicial Magistrate, Devakottai and quash the same as illegal.

2.The case of the prosecution / Respondent before the Trial Court is that the first petitioner received a sum of Rs.15,50,000/- from the respondent on various occasions between the year 2010 and 2015. On 22.06.2016, the respondent contacted the first petitioner over phone and the said call was attended by the second petitioner and during the time of telephonic conversation the second petitioner informed the respondent that she would not return the amount. Subsequent to that on 29.05.2016, the respondent along with his friends requested the petitioners to return the money, for which, they abused the respondent in filthy language and criminally intimidate him. Thereafter on 05.07.2017, the respondent attend a marriage at Devakottai, wherein, he was abused, assaulted and threatened by the petitioners. For the said incident, the respondent preferred a complaint before Devakottai Town Police Station, but due to the reason that the Police Officer refused to receive the complaint, he preferred a private complaint before the learned Judicial Magistrate, Devakottai.

3.Further, case of the prosecution / respondent is that the
<https://www.mca.gov.in/cases> the respondent and the sister of the 2nd and 3rd



petitioners was solemnized on 04.11.2011. After marriage, due to difference of opinion, both the respondent and his wife got separated from the matrimonial life. Due to which, the respondent filed a petition for divorce in HMOP No.36 of 2016 on the file of the Subordinate Court, Devakottai and the same is pending. In the mean while, the respondent filed a private complaint against the petitioners before the learned Judicial Magistrate, Valangaiman, under Section 156(3) of Cr.P.C for registering the case and for investigating the same.

4.On receipt of the complaint preferred by the respondent, the Inspector of Police, Valangaiman Police Station, had registered a case in Crime No.187 of 2016 on 05.08.2016 and after due investigation, the above said complaint was closed as 'mistake of fact'. In this regard, after accepting the final report filed by the Inspector of Police, Valangaiman Police Station, the learned Judicial Magistrate, Valangaiman, had accepted the closure report and granted liberty to the respondent to file a private complaint.

5.Further, case of the respondent is that against the RCS notice served upon him, the respondent filed a criminal original petition before this Court on 06.03.2017. The said criminal original petition was listed for maintainability in Crl.O.P.(MD) SR.No.6103 of 2017 before this Court and thereafter, by order, dated 14.06.2017, the said petition was dismissed as not maintainable, however, liberty was given to the respondent to file a private complaint before the learned Judicial Magistrate, Valangaiman. The respondent filed a private complaint before the learned Judicial Magistrate, Devakottai, on the same set of facts, without closing the earlier proceedings. In the said circumstances, the complaint filed by the respondent was taken on file in C.C.No.3 of 2018 and now the matter stands posted to 20.06.2018, for trial.

6.According to the petitioners, the said private complaint filed by the respondent is illegal and a clear abuse of process of law. Therefore, the petitioners are in need of an order of quash in respect to the case filed in C.C. No.3 of 2018, through this petition.

7. Repudiating the allegations levelled by the petitioners, the respondent filed a counter affidavit and made a submission that only based on the order passed by this Court, a private complaint was filed before the learned Judicial Magistrate, Valangaiman, with respect to the same cause of action. The allegations levelled by the petitioners that there is no transactions took place between the petitioners and the respondent and that the respondent filed the above said police complaint as a counter-blast to the maintenance petition is mischievous and misleading. He would further state that the income tax returns filed by the respondent clearly elicited the loan disbursements as well as the receivables from the second petitioner. Only after due consideration of the said allegations, the learned Judicial Magistrate, Devakottai, adjudged the prima



facie made out and took cognizance under C.C.No.3 of 2018. The allegations levelled by the petitioners are unreasonable and illogical. As such, the complaint made by the respondent cannot be quashed.

8.The learned counsel appearing for the petitioner would submit that after suppressing the fact in respect of closure of First Information Report in Crime No.187 of 2016, the respondent filed a private complaint, which is exactly similar to the complaint filed before the Police Officer. The repeated attempt made by the respondent to improve his case cannot be taken into account to appreciate the case of the respondent. In otherwise, in respect of cheating, payment of money, criminal intimidation, hurt, there is no evidence is in the hands of the respondent. In this regard, the learned counsel for the petitioners relied upon the following judgments reported in

- 1) 2019(1) L.W. (Crl.) 771 (Crl.O.P(MD)No.6798 of 2018, dated 08.10.2018)
- 2) CRR 1563 of 2015 dated 30.08.2019, Calcutta High Court,
- 3) Crl.O.P(MD)No.9083 of 2017, dated 21.08.2018.

9.Per contra, the learned counsel for the respondent would submit that due to family dispute, after committing mischievous offence as alleged in the complaint, the petitioners approached this Court only with an intention to escape from the clutches of law. The occurrence narrated by the petitioners are entirely based upon the facts and therefore, the same has to be decided only during the time of trial.

10.Heard, the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent.

11.Upon considering the arguments advanced by either side, it is not in dispute that the petitioners and the respondent are related to each other. It is also not in dispute that the respondent got married the sister of the second and third petitioners and as of now the respondent herein, filed a petition to dissolve the said marriage in HMOP No.36 of 2016. Subsequent to that, based on the complaint given by the respondent a case has been registered at Valangaiman Police for the same offence, now referred by the respondent in the complaint. Further, the said First Information Report has also been closed as mistake of fact. Thereafter the respondent approached this Court by filing Crl.O.P.6103 of 2017, in which, this Court has passed the order as follows :

"In the result, this petition in SR stage is dismissed as not maintainable. Since this petition has been filed on 06.03.2017 that is one day prior to the day on which the Magistrate had directed the petitioner to appear, this Court is of the view that



interest of justice will be served, if liberty is given to the petitioner to file a private complaint before the learned District-cum-Judicial Magistrate, Valangaiman, Thanjavur District within two weeks from the date of receipt of a copy of this order."

Only based upon the liberty granted by this Court, the respondent filed a private complaint and the same was assigned with case number as C.C.No.3 of 2018.

12.Now on going through the averments made in the copy of the complaint needs to be quashed, the respondent alleged that from the year 2010-2015, he is having loan transactions with the petitioners. Further he assured that Income Tax returns filed by him is proved the said transactions. In this regard, the said allegations have to be proved only by filing necessary documents in respect of alleged transactions between the petitioners and the respondent. Further the said aspect is a clear question of fact and thereby, the same has to be tested only by let in evidence by either party. Moreover, the main ingredients which are necessary for the offence punishable under Section 420 of Cr.P.C. for example whether the petitioners are having the dishonest intention or not, is also on factual aspects and the same would also verify only during the time of trial.

13.In this regard, the judgment of our Hon'ble Apex Court in **Central bureau of Investigation Vs. A.Ravishankar Prasad and others** reported in **(2009) 2 Supreme Court Cases (Cri) 1063**, has held as follows :

"Both English and the Indian Courts have consistently taken the view that the inherent powers can be exercised in those exceptional cases where the allegations made in the first information report or the complaint, even if are taken on their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. When we apply the settled legal position to the facts of this case it is not possible to conclude that the complaint and the charge sheet prima facie do not constitute any offence against the respondents."

14.Further in the case of **Ajaykumar Das Vs. State of Jharkhand and others** in **Criminal Appeal No.1735 of 2011**, our Hon'ble Apex Court has held as follows :

"Ration Decidendi : Genuineness of the allegations / charge is an issue to be tried and the Court in exercise of its jurisdiction

<https://hcservices.ecourts.gov.in/hcservices/> Section 482 of the Code of Criminal



Procedure cannot delve into such factual controversy so as to quash the proceedings."

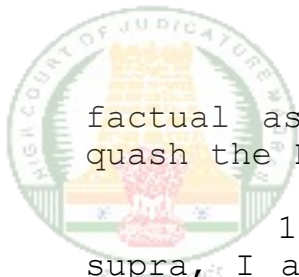
Therefore, to find out the truthfulness of the allegations, trial is necessary, and if the allegations is based on the factual aspects, the Court cannot come to the conclusion that there is no prima facie case against the person who alleges to have committed any offence.

15.The other area which is necessary to decide that the respondent made allegations that on 05.07.2017, in presence of their relatives, the petitioners insulted the respondent by using abusive words, further during the time of said transactions, the petitioners alleged that the documents related to the transactions are received from the wife of the respondent. Further the case of the petitioners is that during such time, the petitioners made a life threat. Though in respect of life threat for example 506(ii) of IPC, the respondent is not having a good case, in respect of 420, 294(b), 323 the allegation to be tested only during the time of trial. So in the absence of trial, we cannot come to the conclusion that the complaint filed by the respondent is abuse of process of law.

16.In the case of **State of Punjab and others Vs. Inder Mohan Chopra and others** reported in **2009 (2) SCC Crl.150**, our Hon'ble Apex Court has held as follows :

"Exercise of power under Section 482 of Cr.P.C in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction."

Therefore, applying the principles set out in this case also, though the First Information Report has been registered by the Devakottai Police Station was closed as mistake of fact, the provision under Sections 110, 190(1) of Cr.P.C., gives wide power to the respondent to file a private complaint for a purpose of proving the allegations levelled in the First Information Report. In this case, only upon the permission given by this Court the respondent filed a private complaint before the learned Judicial Magistrate. As already discussed, the allegations levelled by the respondent is purely on



factual aspects. Therefore, this Court is not in a position to quash the First Information Report as prayed for by the petitioners.

17. Accordingly, in the light of the discussion as stated supra, I am of the view that the petition filed by the petitioners is devoid of merits, and therefore, this petition is liable to be dismissed.

18. In the result, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (crl.side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

RM

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

The Judicial Magistrate,
Devakottai

Crl.O.P.(MD)No.9767 of 2018
27.08.2020

KB(07.09.2020) 6P 2C