



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P (MD) No.21982 of 2016

and

Crl.M.P.(MD) Nos.11346 & 11347 of 2016

WEB COPY

S.Sivakumar

... Petitioner

Vs.

K.Arumugachamy

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records in C.C.No.307 of 2015 on the file of the Judicial Magistrate Court, Aruppukottai and to quash the same as illegal.

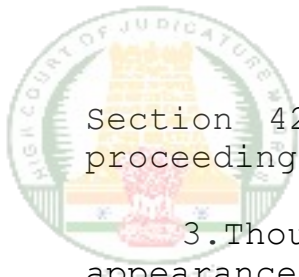
For Petitioner : Mr.G.Marimuthu

For Respondent : Mr.M.Mohammed Sherbodeen

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.307 of 2015 on the file of the Judicial Magistrate Court, Aruppukottai.

2.The learned counsel for the petitioner would submit that the petitioner and the respondent / defacto complainant are known to each other. The petitioner is used to borrow amount from the respondent/defacto complainant on various occasions and is to return back the amount like wise a sum of Rs.5,00,000/- borrowed from the respondent / defacto complainant by executing pro-note and also issuing cheques. According to the respondent / defacto complainant, the said cheques were presented by the respondent / defacto complainant for collection and the same was dishonored' stating that 'funds insufficient in the account'. Therefore, the petitioner lodged a complaint for the offences under Sections 420, 406 and 506(ii) I.P.C. When the respondent / defacto complainant asked for return of money, the petitioner threatened the respondent/ defacto complainant with dire consequences. Except this allegation, the offence under Section 420 I.P.C. is not at all made out as against the petitioner, since the petitioner used to borrow the amount on various occasions and also return back the amount to the defacto complainant. Therefore, on the exception... of borrowing amount, there is absolutely no intention and it is only money transaction and hence, no offence is made out under



Section 420 IPC and therefore, he sought for quashment of the proceedings.

3. Though notice served to the respondent and he has entered appearance through a counsel, no one appeared on behalf of the respondent / defacto complainant.

4. Heard the learned counsel for the petitioner and perused the materials available on record.

5. It is seen that the petitioner is a sole accused in this case. The crux of the complaint is that the petitioner borrowed a sum of Rs.5,00,000/- from the respondent herein for his urgent business needs. While he purchased the two wheelers, agreed to repay the amount with profit. After borrowed the said amount, he executed a pro-note and issued cheques for executing sureties. Thereafter, the petitioner failed to repay the amount and also the cheques, which were given for sureties to the respondent and the same was returned as 'dishonored' and thereby, the petitioner cheated the defacto complainant and lodged a private complaint. On perusal of the complaint and documents filed in support of the complaint reveals that the petitioner used to borrow loan from the defacto complainant. Thereafter, the petitioner repaid the entire loan amount. While being so, on 15.11.2012, the petitioner borrowed a sum of Rs.5,00,000/- by executing pro-notes and at the time of borrowal of loan, he also issued cheques for security purpose. The documents which were annexed in support of the complaint also reveals that the cheques and also pro-note executed by the petitioner, at the time of borrowal of loan. Therefore, at the time of borrowing loan, the petitioner had no intention to cheat the defacto complainant. That apart, the entire prosecution is a money transaction and all are civil in nature. If at all the respondent / defacto complainant aggrieved for non-repayment of the loan amount borrowed by the petitioner, the respondent ought to have filed a suit for recovery of money in the manner known to law. In respect of Section 506(ii) I.P.C. is concerned, when the defacto complainant asked for repayment of the loan amount, which was borrowed by the petitioner herein, the petitioner threatened him with dire consequences by showing Gun. Except the allegation, there is absolutely no evidence to attract under Section 506(ii) I.P.C. In this regard, it is relevant extract the judgment of this Court in **Crl.O.P. (MD) No.11030 of 2014 (Abdul Agis Vs. State through the Inspector of Police)**, which reads as follows:-

"7. It is seen from the statements recorded under Section 161(3) of Cr.P.C. of the second respondent/ defacto complainant that it does not contain any obscene words, which were uttered by the petitioner herein and the entire allegations are very simple in nature. It is also seen



from the statement of one Uthami, that the petitioner threatened the defacto complainant with dire consequences when he dashed the defacto complainant. The entire allegations are trivial in nature. Further, to attract the offence under Section 506(i) of I.P.C., there was a threatening only by words. As pointed by the learned counsel appearing for the petitioner, the threat should be a real one and not just a mere word when the petition uttering does not exactly mean what he says and also when the person to whom threat is launched does not feel threatened actually. Therefore, the offences under Sections 294(B) and 506(i) of I.P.C. are not made out as against the petitioner herein and also the entire criminal proceedings is clear an abuse of process of Court. Therefore, this Court is inclined to quash the entire proceedings."

6. The above judgment is squarely applicable in the case on hand. Therefore, Section 506(ii) is not made out as against the petitioner and the entire complaint is nothing but abuse of process of law and it cannot be sustained as against the petitioner. Hence, this Criminal Original Petition is allowed and the proceedings in C.C.No.307 of 2015 on the file of the Judicial Magistrate Court, Aruppukottai, is hereby quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

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,
Aruppukottai,
Virudhunagar District.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Section Officer-2 copies
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.G.M.LAW OFFICE, Advocate (SR-23405[F] dated
01/12/2020)

Order made in
CRL.O.P (MD) No.21982 of 2016
30.11.2020

(CO)
KM (16.12.2020) P 5C