



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.07.2020
Pronounced on : 05.08.2020

CORAM:

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

CRL OP(MD)No.15294 of 2018
and
Crl.M.P.(MD)No.6755 of 2018

Balagurusamy, S/o.N.Gopal ... Petitioner
Vs.

1.State Rep. by
Inspector of Police,
Thuckalay Police Station,
Kanyakumari District.
(Crime No.129 of 2011)

2.John Sounder, S/o.Anbaiyan ... Respondents

PRAYER: Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records relating to C.C.No.345 of 2012, pending on the file of the Judicial Magistrate Court, Padmanabhapuram, and quash the same.

For Petitioner : Mr.A.Siva Subramanian
For R1 : Mr.APG OHM Chairma Prabhu
Additional Public Prosecutor
For R2 : Mr.N.Dilipkumar

O R D E R

This Criminal Original Petition has been filed seeking the relief to call for the records in C.C.No.345 of 2012, pending on the file of the Judicial Magistrate Court, Padmanabhapuram and quash the same as illegal.

2.The petitioner herein is the sole accused and the second respondent herein is the de-facto complainant in the above referred case.

3.On 02.02.2011, based on the complaint given by the second respondent, the first respondent police registered an FIR in Crime No.129 of 2011 for the offences punishable under Sections 420, 366
<https://hcservices5006s.gov.in/hcservices5006s/w.511> IPC. After registration of the case, the



first respondent herein completed the investigation and filed the charge sheet and the same was taken on file by the learned Judicial Magistrate, Padmanabhapuram, in C.C.No.345 of 2012, for the offences under Sections 420, 365 r/w. 511 I.P.C. and 506 (i) IPC. Now, the said case is pending for trial proceedings.

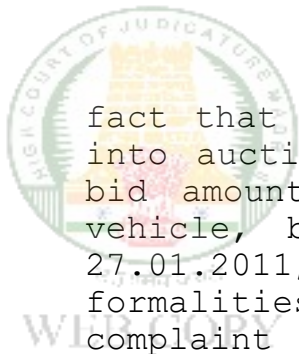
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4.The learned counsel appearing for the petitioner would submit that the case instituted against the petitioner is nothing, but abuse of process of law, for the reason that, the second respondent/de-facto complainant is an advocate and the first respondent police in order to satisfy the second respondent, falsely implicated the petitioner in this case and filed the charge sheet against him. In earlier, the second respondent/de-facto complainant had purchased a two wheeler, by availing finance facilities from the Bajaj Finance Limited. Since the second respondent/de-facto complainant did not repay the loan amount, the Fiancier re-possessed the vehicle. Thereafter, the Financier brought the vehicle for auction sale, in which, the petitioner's brother viz., Balamurugan participated and became the successful bidder and the accordingly, the vehicle was sold to him in the auction sale for a sum of Rs.25,200/- [Rupees Twenty Five Thousand and Two Hundred only]. Subsequently, based on the complaint given by the second respondent/de-facto complainant as if his vehicle was stolen away, the respondent police remanded the petitioner, whose name is Balagurusamy and who had nothing to do with the auction proceedings. The name of the accused was mentioned in the First Information Report as 'Balamurugan'. However, the petitioner was remanded to judicial custody. Therefore, it is clear abuse of process of law. In fact, the Financier had re-possessed the vehicle and brought it for auction and the same was purchased by the brother of the petitioner, viz., G.Balamurugan, by paying a valid consideration.

5.In support of the claim, the learned counsel appearing for the petitioner filed Typed Set of Papers enclosing a copy of the Aadhaar Card and Ration Card issued in favour of the petitioner. Those documents reveal the fact that the name of the petitioner is Balagurusamy Gopal. He had also produced a copy of the Telegram sent by the Bajaj Finance Limited to the Inspector of Police, Thuckalay Police Station, Thuckalay. The contents of the said Telegram reveal the fact that on 06.12.2010, the motorcycle, bearing Registration No.TN-75-A-2945 was re-possessed by the Bajaj Finance Limited, for non-payment of loan installments. Thereafter, on 10.01.2011, the said Bajaj Finance Limited sent a final reminder letter to the second respondent, by saying about the re-possession of the vehicle and informed as if the E.M.I. has not been paid properly before 17th January, 2011, the vehicle will be sold through the auction, without any further intimation.

6.The another document filed by the petitioner, viz., the Auction Schedule, issued by the Bajaj Finance Limited, reveals the

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



fact that the above referred re-possessed vehicle has been brought into auction and the petitioner's brother was informed to pay the bid amount, as he is the successful bidder of the re-possessed vehicle, bearing Registration No.TN-75-A-2945 and thereafter, on 27.01.2011, the bid amount was paid. Only after completing the formalities as above, the second respondent herein lodged a complaint before the first respondent police on 02.02.2011, as if his vehicle, bearing Registration No.TN-75-A-2945 was stolen away on 05.12.2010, i.e., the date on which, the disputed vehicle was re-possessed by the Bajaj Finance Limited. The petitioner has substantiated his case by producing relevant documents. Therefore, according to the petitioner, conducting trial in C.C.No.345 of 2012 against him, is abuse of process of law.

7.Mr.S.Chandrasekar, learned Additional Public Prosecutor appearing for the first respondent would submit that now the petition mentioned case is posted for trial.

8.On the other hand, the learned counsel appearing for the second respondent would submit that the documents now relied on by the petitioner, are all created one and the validity of the said documents has to be tested only during the time of trial and therefore, he prayed for dismissal of this Criminal Original Petition.

9.The learned counsel appearing for the second respondent relied on the judgment of the Hon'ble Apex Court in **Sonu Gupta Vs. Deepak Gupta and others [2015 (3) SCC 424]**, and submitted that the learned Magistrate is not required to consider the defence version when at the time of taking cognizance against the petitioner. He would further submit that the inherent power under Section 482 Cr.P.C. can be used, to set right glaring injustice. The relevant portion of the said judgment reads as follows:-

'8. At this stage, the learned Magistrate is not required to consider the defence version or materials or arguments nor is he required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials will lead to conviction or not.'

10.Now, on going through the charge sheet filed by the first respondent police, it is seen that the first respondent has not enclosed a copy of the complaint given by the second respondent, dated 05.12.2010, as alleged. In the First Information Report, which is the earliest document for the Crime, the second respondent has mentioned on 05.12.2010 when the disputed vehicle was parked in the Tahsildar Office, the same was stolen away and thereafter, a case has been registered for the said occurrence. If the said averments stated by the second respondent are true, definitely, the



first respondent has stated the crime number, on which, the case has been registered. Furthermore, the crucial aspect, which has to be decided in this case is, the learned Judicial Magistrate before taking cognizance for the offence under Section 420 IPC, he has to verify the *prima facie* case (i.e.,) the dishonest intension of the petitioner in the crime. In this regard, the petitioner has clearly proved the fact that on the date of registration of the case, his brother was the owner to the disputed vehicle and therefore, there is no necessity for the petitioner to demand the second respondent to pay a sum of Rs.37,000/- for returning the vehicle and hence, the question of dishonest intension does not arise. Further, if the second respondent has refused to pay the same, definitely, there is no necessity for the petitioner to kidnap the second respondent.

11. Therefore, considering the facts and circumstances of the case, this Court while exercising its jurisdiction under Section 482 Cr.P.C., would not embark upon an enquiry as to whether the evidence in question is reliable and sufficient or not. This function is clearly within the domain of the trial Magistrate. However, the Court has to consider whether there is basis in the documents filed under Section 173 of Criminal Procedure Code for the allegations made in the charge sheet.

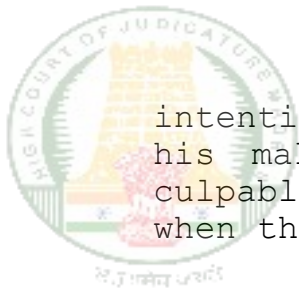
12. In this regard, it is relevant to mention here the decision of this Court in **Murugan and others Vs. State of D.C.B. [Crl.M.P.No.4460 of 1983, decided on 15.06.1988]**, wherein it has been held as follows:-

''8.The Court has to consider whether there is basis in the documents filed under Section 173 of Criminal Procedure Code for the allegations made in the charge-sheet. No doubt, the Court is not expected to consider the sufficiency of the material or the truth or falsity of the material. That could be done only at the stage of weighing the evidence. However, at this stage, the Court has to consider whether there are materials, which if unrebutted, would end in conviction. I am not able to find any such material insofar as the present petitioners are concerned.''

13. Here, in this case also, there was no material in the charge sheet for the alleged offence of kidnapping and for cheating.

14. In **Hira Lal Hari Lal Bhagwati Vs. C.B.I., [Appeal (Crl.) No.676 of 2003, decided on 02.05.2003]**, the Hon'ble Apex Court has held as follows:-

''It is well settled law, by catena of decisions, that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest



intention at the time of making promise or representation. From his making failure to keep up promise subsequently, such a culpable intention right at the beginning that is at the time when the promise was made cannot be presumed.''

15. In this case, as already observed, in respect of the offence under Section 420 IPC, nothing was shown on the side of the complainant that the petitioner is having dishonest intention. At any event, on culling out the entire circumstance reveals the fact that the vehicle owned by the second respondent was in the hands of the petitioner's brother. Therefore, it is obvious that this case has been instituted by the first respondent against the petitioner with *mala fide* intention. It is well settled that the High Court can still quash the proceedings, if it is convinced that the power of investigation has been exercised *mala fide*.

16. In the light of the discussion stated supra, I am of the considered opinion that the proceedings in C.C.No.345 of 2012, pending against the petitioner, on the file of the Judicial Magistrate Court, Padmanabhapuram, are liable to be quashed. Accordingly, the same are quashed.

17. In the result, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

// True Copy //

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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,
Padmanabhapuram.

2. The Inspector of Police,
Thuckalay Police Station,
Kanyakumari District.

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



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

+1cc to Mr. N.Dilipkumar, Advocate, SR.No.13633.

Order in
CRL OP (MD) No.15294 of 2018
05.08.2020

CS (18.08.2020) 6P 5C