

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved On : 10.09.2020
Pronounced On : 08.06.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.26639 of 2013
and
MP.No.1 of 2013

Jaya Prakash ... Petitioners / A3

Vs.

1.State of Tamil Nadu
by The Commissioner of Police,
Coimbatore District.

2.The Inspector of Police,
Mahalingapuram Police Station,
Pollachi

... Respondent 1 & 2 /
Complainants

3.Sree Hari Manoj Kumar

... 3rd Respondent /
Defacto Complainant

(Impleaded as 3rd Respondent
as per order of this Hon'ble Court
dated 25/10/16 in Crl.M.P.No.11276/16
in Crl.O.P.No.26639/13 by PNPJ)

PRAYER: Criminal Original Petition is filed under Section 482
of the Code of Criminal Procedure, to call for the records
relating to P.R.C.No.19 of 2013, pending on the file of
Judicial Magistrate No.II, Pollachi and quash the same.

For Petitioner : Mr.Shanmuga Sundaram Senior Counsel for
Mr.Arun C. Mohan

For R1 & R2 : Mr.C.Iyyapparaj
Addl.Public Prosecutor

For R3 : Mr.J.Lenin

O R D E R

This Criminal Original Petition has been filed praying to
quash the proceedings in P.R.C.No.19 of 2013, pending on the
file of learned Judicial Magistrate No.II, Pollachi.

2.The brief facts of the case are as follows:-

(i) The deceased Doctor Nachimuthu was living in Nehru Colony, Pollachi along with his wife Annapoorani, son Srihari Manojkumar, daughter-in-law Subharani and daughter Premalatha, as joint family. The deceased Nachimuthu's son Srihari Manojkumar was running a bus company and also doing real estate business in Palakkad, Kerala. Due to loss in the business, the said Srihari Manojkumar approached the accused Jeyaprakash-A3, for arranging loan. Accordingly, the accused arranged a loan of Rs.49,50,000/- from 'Rajeswari Auto Investment Finance Company' with interest at the rate of 6% per annum. The accused 1 to 3 are the shareholders of the said Finance Company. The accused obtained a bond, power deed, cheque, signed unwritten stamp paper from the said Sri Hari Manojkumar, as security for the loan.

(ii) Since, there was partial failure in paying exorbitant interest and non-refund of the loan amount, the accused frequently gathered unruly mob in the hospital run by the deceased, acted unlawfully and used unparliamentary words, in front of hospital staff. Later, the accused, based on the power deed obtained from the deceased, executed a sale deed in favour of one R.V.K.Krishnan. Because of the torture met out by the accused, grabbing the property of the deceased by the accused, the deceased committed suicide by jumping before a running train. There was suicidal note by the deceased Doctor Nachimuthu mentioning the name of VKA Karupannan, Subramani and Jayaprakash, as the reason which propelled the deceased to take the extreme step of committing suicide.

3.When the matter is taken up for hearing, the learned counsel appearing for the petitioner-accused would submit that in this case there are totally nine accused and the petitioner herein is A3. Initially, the case was registered under Section 174 Cr.P.C., later, it was altered into one under Sections 34, 147, 306, 406 and 420 of IPC., r/w. Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003. After investigation, the Inspector of Police, Mahalingapuram Police Station, Pollachi filed the charge-sheet, which was taken cognizance in P.R.C.No.19 of 2013, by learned Judicial Magistrate No.II, Pollachi and the same is pending. While that be so, the petitioner and the defacto complainant settled their disputes amicably, as they have decided to keep harmony between them. They have also filed a Compromise Memo, dated 05.08.2020 to that effect.

4.The learned counsel appearing for the defacto complainant - 2nd respondent made a submission that during pendency of the proceedings in P.R.C.No.19 of 2013, pending on the file of learned Judicial Magistrate No.II, Pollachi, the matter is settled amicably between the parties to the dispute.

The de facto complainant does not intend to proceed any further against the petitioner and he has no grievance against him.

5.The learned Additional Public Prosecutor appearing for the State would submit that the accused, based on the power deed obtained from the deceased, executed sale deed in favour of one R.V.K.Krishnan. Further, the accused tortured, grabbed the property of the deceased. Because of the said act of the accused, the deceased committed suicide by jumping before a running train. There was suicidal note by the deceased Doctor Nachimuthu mentioning the name of the accused viz., VKA Karupannan, Subramani and Jayaprakash, as the reason, which propelled the deceased to take the extreme step of committing suicide. Further, the offences are not compoundable one and the accused should be made to face trial and compounding of the offence, at this stage, may not be proper and therefore, prayed for dismissal of the Criminal Original Petition.

6.I have carefully considered the rival submissions of the respective counsels. I have verified the documents and materials produced along with the above petition.

7.It is seen that the deceased in this case had committed suicide in front of the running train on the early hours of 19.08.2010 and thereafter a complaint was lodged by the Station Master, Pothanoor, to the Railway Police and they have registered a case in Crime No.424 of 2010 for offence under Section 174 Cr.P.C. Thereafter, on investigation it was found that the accused in this case viz., V.K.A.Karupannan-A1, Subramiyam-A2, are running a finance business with whom the deceased Dr.Nachimuthu had taken a loan to tie over for the loans of his son, LW3 Sree Hari Manoj Kumar. For the financial loan, the petitioner/A3 said to have introduced A1 and A2 to the deceased Dr.Nachimuthu. Further in recovery of the loan the accused had abused, exerted pressure on the deceased. The deceased also executed a Power of Attorney dated 19.07.2010 for the property, which is in the name of his daughter and wife and also handed over the signed cheques and bond papers. Using the same A1 and A2 had transferred the property in the name of A7-K.S.Mani, A9-V.K.Krishnan, promised to hand over the balance amount after adjusting with the loan amount.

8.Later they failed to return back the money and threatened to register further cases against Dr.Nachimuthu, hence on 19.08.2010 he ended his life. The suicide note left by Dr.Nachimuthu was handed over by his son Sree Hari Manoj Kumar and thereafter, the case was altered and transferred to the file of the present second respondent Inspector of Police, Mahalingapuram Police Station, Pollachi after getting appropriate orders. After completion of investigation charge sheet has been filed listing LW1 to LW28 and listing documents. As far as this petitioner is concerned, he is

running a bakery in Pollachi in the name of Ganesh Bakery and he is known to Dr.Nachimuthu, who approached him for the loan and this petitioner had introduced V.K.A.Karuppannan-A1, Subramiyam-A2, who were running a Finance company in the name of Rajarajeswari Auto Investment Finance Company.

9.As regards this petitioner, other than introducing A1 and A2, he has no role, may be he had received some brokerage commission for the loan. The respondent police had proceeded primarily on the suicide note. The suicide note coming into existence is clouded.

10.LW3, Sree Hari Manoj Kumar, son of the deceased for whom the deceased had taken the loan. Though the suicide took place on 19.08.2010, the suicide note was said to have been found in the clinic only on 26.08.2010 and the same was produced to the Police on 03.09.2010. The above said suicide note was sent for forensic study. The handwriting expert D.Thamaraiselvan, LW24 during his study had marked Q1 to Q8 and had examined the same with A1 to A79 and with the admitted signatures of deceased Dr.Nachimuthu and he had given a report stating that "on the basis of the present material it is not possible to offer any reliable opinion on the red enclosed signature and writings stamped and marked Q1 to Q8 on a comparison with the red enclosed signatures and writings similarly stamped and marked A1 to A79".

11.Other than this, the other witnesses viz., LW4 - Annapoorani - Wife of the deceased, LW5 - Premalatha - Daughter of the deceased, LW6 - Subarani - Daughter-in-law of the deceased, LW7 - Narayanaswamy and LW8 - Ganesh are the Brother-in-laws of the deceased, LW9 - Suresh Kumar - Son-in-law of the deceased, have not stated about this petitioner accompanying the other accused on 16.08.2010 to the clinic and on 17.08.2010 to the house of the deceased and demanding money, abusing, threatening the victim. The deceased thereafter on 19.08.2010 had committed suicide. The observation mahazar witnesses namely LW10 - Zahir Hussain and LW11 - Selvaraj have not stated anything about the availability of the suicide note. LW12 to LW15 are the neighbours of the deceased Dr.Nachimuthu and they had not attributed any specific overtact against the petitioner. LW16 and LW17 are the witnesses for the arrest and confession of the other accused. LW18 and LW19 are the Sub Assistant Registrars of Pollachi and Coimbatore, who had registered the documents brought by A1 and A2 in favour of A7 and A9. LW24, is the Scientific Officer and Document Expert, Forensic Science Department, Mylapore, Chennai. LW25 is the Doctor, who had conducted the Post mortem. LW21, 22, 23, 26, 27, 28 are the police officials, LW20 is the court staff.

12.On perusal of the statement of these witnesses and the documents it is seen that except the petitioner introducing A1 and A2 financiers to the deceased for a brokerage, there is no

specific over tact as against the petitioner. The production of suicide note, is clouded with mystery. Added to it, the clear finding of the handwriting expert is that the suicide note does not confirm, with the handwriting of Dr.Nachimuthu, the deceased. The son of the deceased viz., LW3-Sree Hari Manoj Kumar for whom the deceased had taken the loan, had now consented to quash the case as against the petitioner.

13. On coming to know about the fact that the petitioner had not involved in any of the heinous offence, LW3 Harimanoj Kumar son of the deceased filed a compromise memo dated 05.08.2020 and also appeared before this Court and confirmed the compromise and affirmed that he has no objection to quash the charge sheet as against this petitioner is concerned, which is pending in PRC.No.9 of 2013. The relevant portion of the Compromise Memo is extracted hereunder:-

"During the pendency of the Criminal Original Petition, the petitioner and the 3rd respondent / defacto complainant have amicably settled the matter out of Court and entered into a compromise willingly without any fear or pressure or threat by settling all financial commitments between themselves.

The 3rd respondent / defacto complainant has no intention to prosecute his complaint against the accused and has no objection for allowing the quash application by quashing the charge sheet, dated 27.02.2013, and now pending in P.R.C.No.19 of 2013, before the Court of Judicial Magistrate II, Pollachi."

14. At this juncture it is relevant to refer the Judgment of the Hon'ble Apex Court in Gian Singh Vs. State of Punjab reported in (2012 (10) SCC 303), wherein it has been held that even in cases involving non-compoundable offences, the High Court can act under Section 482 of Cr.P.C., and quash the proceedings, if the parties have really settled the whole dispute, which does not involve any public interest of public issue, and continuance of the prosecution will not serve any purpose. The Apex Court in the case of Narinder Singh and others Vs. State of Punjab and another reported in (2014) 6 Supreme Court Cases 466 had approved the quashing of proceedings even in the case of grave offence, the court by justifiable, discernible manner, considering the facts of the case and also the compromise arrived at.

15. Further in the case of M.Arjunan Vs. State represented by its Inspector of Police reported in (2019) 3 Supreme Court Cases 315 had held that though a suicide note has been left by

the deceased, who was unable to repay the loan and had taken the extreme step. The sheet anchor of the prosecution's case to prove the guilt of the accused is the suicide note written by the deceased. In this case, the suicide note is clouded with mystery and there is no evidence suggesting that the petitioner intended by any act to instigate the deceased to commit suicide.

16.Considering the facts and circumstances of the case and the principle enunciated by the Hon'ble Apex Court in the above referred Judgments, this Court is of the view that no useful purpose will be served in keeping the proceedings in P.R.C.No.19 of 2013, pending on the file of learned Judicial Magistrate No.II, Pollachi, even though, the offences involved are not compoundable in nature.

17.Accordingly, this Criminal Original Petition stands allowed and as a sequel, the proceedings in P.R.C.No.19 of 2013, pending on the file of learned Judicial Magistrate No.II, Pollachi, as against the petitioner A3 alone is hereby quashed. The Compromise Memo, dated 05.08.2020, shall form part and parcel of this order. Consequently, the connected miscellaneous petition is closed.

*Copy of the Memo Compromise enclosed

Sd/-

Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

MPK/ah

To

1. The Judicial Magistrate No.II,
Pollachi.
2. -do-through The Chief Judicial Magistrate,
Coimbatore.
- 3.The Commissioner of Police,
Coimbatore District.
- 4.The Inspector of Police,
Mahalingapuram Police Station,
Pollachi
- 5.The Public Prosecutor,
High Court, Madras.

Cr1.O.P.No.26639 of 2013

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

GMI (09/07/2021)