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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2021

CORAM:

THE HON'BLE MR.JUSTICE V. BHAVANI SUBBAROYAN

CRL.O.P.No.26108 of 2016
and
Crl.M.P.No.12948 of 2016

Mathizhagan

... Petitioner

Versus

1. The Inspector of Police,
Township Police Station,
Neyveli.

2. K. Sankar

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.30 of 2015 on the file of the learned District Munsif cum Judicial Magistrate, Neyveli and to quash the same.

For Petitioner : Mr. D. Vasanth,
for Mr.N.Suresh

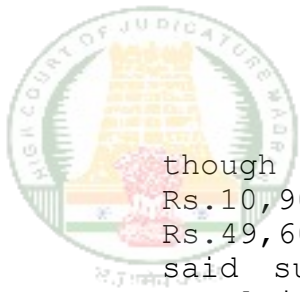
For Respondent : Mr.E.Raj Thilak,
Gov. Advocate (Crl.Side)
for R1

: Mr.P.Paramasiva Doss, for R2

ORDER

This petition has been filed to quash the C.C.No.30 of 2015 on the file of the District Munsif cum Judicial Magistrate, Neyveli.

2. The case of the prosecution is that the petitioner had voluntarily asked the defacto complainant to deposit a total sum of Rs.60,50,000/- in the MAX PRO Finance for interest on behalf of his wife Buvaneswari and her sister, Jeyanthi, Even



though the said Finance Company has repaid a sum of Rs.10,90,000/- , they failed to repay the balance sum of Rs.49,60,000/-. Since the said Finance Company did not pay the said sum, the petitioner and others compelled the defacto complainant to pay the same and also obtained the signature of the defacto complainant in 3 blank promissory notes and one green paper under threat and also abused him in filthy language . Thereafter, on 07.08.2014, based on the complaint given by the defacto complaint a case in Crime No.247 of 2014 for the offences under Sections 147, 148, 342, 294(b), 347, 387 and 506(ii) has been registered as against the petitioner and his family members. Charge sheet has also been filed on 10.10.2014 and the same has been taken on file as C.C.No.30 of 2015.

3. The learned counsel for the petitioner would submit that the defacto complainant has borrowed a sum of Rs.60 lakhs from the wife of this petitioner, namely Buvaneshwari, and agreed to repay the same along with interest at 18% per annum and executed a promissory note in her favour. In spite of repeated demands, he has not paid any amount towards interest or capital. Hence, on 27.06.2014, wife of the petitioner had sent a notice to the defacto complainant and thereby called upon the defacto complaint to pay the due. The defacto complainant has also sent a reply denying all the averments made in the said notice and also stated false averments, which are stated in his complaint.

4. He would further submit that the charge sheet filed by the respondent police is bereft of details and the case has been filed only after issuance of the notice and the reply notice, and it is abuse of process of law. Even though the case has been registered against the petitioner and others based on the promissory note, which was said to be obtained by the petitioners under threat, no documentary evidence has been produced to show the alleged threat. The investigation has not been done in a proper manner and without any objectionable article or a document, in which, the alleged signatures were procured were brought before this Court in the final report and it is totally incomplete and the same is liable to be quashed. The dismissal of the discharge application filed by the petitioners will not preclude the petitioner from seeking to quash the charge sheet. No evidence has been placed before the Court regarding the transaction as alleged by the defacto complainant. Only after issuance of the notice and reply notice, the case has been registered and criminal colour has been given to the civil dispute. The notice and the reply notice clearly shows that there were some money transaction between the parties. Hence he prayed to quash the same.



5. The learned Government Advocate (crl. side) appearing for the respondent police would submit that after investigation, the case has been filed in a proper manner and all the witnesses had given detailed statements regarding the said transaction of money between the parties in their 161 Cr.P.C. Statements. Whether, the signature in the promissory note was obtained under threat or not, has to be decided in the trial and it is left open to the petitioner to raise all the grounds before the Court below at the time of trial.

6. I have considered submissions made on either side and perused the materials available on records carefully.

7. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in CrI.A.No.579 of 2019 dated 02.04.2019 in the case of Devendra Prasad Singh Vs. State of Bihar & Anr., as follows:-

" 12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

8. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in CrI.A.No.1572 of 2019 dated 17.10.2019 in the case of Central Bureau of Investigation Vs. Arvind Khanna, wherein, it has been held as follows:

"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by



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the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

9. Further the Hon'ble Supreme Court of India also held in the order dated 02.12.2019 in CrI.A.No.1817 of 2019 in the case of M.Jayanthi Vs. K.R.Meenakshi & anr, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that 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 may also be entitled 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.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."



The above judgments are squarely applicable to this case and as such, the points raised by the petitioner cannot be considered by this Court under Section 482 Cr.P.C.

10. In view of the above, this Court is not inclined to quash the proceedings in C.C.No.30 of 2015 on the file of the District Munsif cum Judicial Magistrate, Neyveli. The petitioner is at liberty to raise all the grounds before the trial Court. Since the matter is pending from the year 2015, the trial Court is directed to proceed with the trial and complete the trial within a period of six months from the date of receipt of copy of this Order.

11. Accordingly, this criminal original petition is dismissed. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mrp

To

1.The District Munsif cum Judicial Magistrate,
Neyveli.

2.The Inspector of Police,
Township Police Station,
Neyveli.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.N.Suresh, Advocate Sr No.39848

CRL.O.P.No.26108 of 2016

PCH (CO)
PR (20/09/2021)