



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2021

C O R A M

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.No.23819 of 2017

and

CRL.M.P.Nos.13798 and 13799 of 2017

1. Arokiasamy
2. S. Ranganathan ...Petitioners, Accused 1 and 3

Vs

1. State
rep. By The Inspector of Police
B 3 Kattoor Police Station
Coimbatore. ... 1st Respondent/Complainant

2. P. John Brito
... 2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the charge sheet in C.C.No.408 of 2017 on the file of the learned Judicial Magistrate No.II, Coimbatore and quash the same.

For Petitioners ... Mr.L.Mouli

For Respondents ... Mr.R.Kishore Kumar
Government Advocate.
(Criminal Side)
for R.1

No appearance
for R.2

O R D E R

This Criminal Original Petition has been filed to quash the charge sheet in C.C.No.408 of 2017, pending on the file of the learned Judicial Magistrate No.II, Coimbatore.

2. The case of the prosecution case is that the defacto complainant and A.2 entered into a partnership business for a period of one month, dealing with soaps and agreed to share the profits and loss. The defacto complainant gave Rs.64,55,000/-



to A.2 as part of investment. Thereafter, A.2 and A.3 constituted another partnership, wherein A.1 stood as a witness in the partnership deed. When the defacto complainant demanded to return the amount, the petitioners refused to return the amount and threatened with dire consequences. Therefore, a case in Crime No.178 of 2014 has been registered, for the offences punishable under Sections 406, 420, 120 (B) and 506 (ii) of the Indian Penal Code, later altered into 294 (b) and 506 (ii) of the Indian Penal Code.

3. Heard Mr.L.Mouli, learned counsel appearing for the petitioners, Mr.R.Kishore Kumar, learned Government Advocate (Criminal Side) for the first respondent and there is no representation on behalf of the second respondent.

4. Learned counsel appearing for the petitioners submitted that the defacto complainant, after giving an undertaking before the first respondent, on 14/12/2013, that they will seek remedy before the Civil Court, the first respondent Police ought not to have filed the charge sheet. The defacto complainant filed the complaint only to harass the petitioners for not including him as one of the partners in their business. Hence, the complaint lodged against the petitioners is nothing but an abuse of process of law.

5. Learned counsel appearing for the petitioners further submitted that except uttering that the accused threatened the defacto complainant, there is no other allegation to constitute an offence. Since the alleged threat would not constitute an offence, the petitioners pray for quashment of C.C.No.408 of 2017, pending on the file of the learned Judicial Magistrate No.II, Coimbatore.

6. Learned Government Advocate (Criminal Side) submitted that though there is no materials to proceed against the petitioners, final report has been filed only under the criminal intimidation.

7. Perused the materials available on record.

8. The dispute between the petitioners and defacto complainant is civil in nature. The allegation of the petitioners is that the defacto complainant had invested the amount at the instance of the petitioners. Therefore, in the absence of any fraudulent or dishonest act, offence under Section 420 of the Indian Penal Code would not be attracted. It is not the case of the defacto complainant that the petitioners had misappropriated the money. Therefore, the question of misappropriation to attract the offence under Section 406 for breach of trust also will not arise. Similarly,



to constitute an offence under Section 506 (ii) of the Indian Penal Code, except stating that the accused has abused the defacto complainant in public place, there is no other materials produced to prove the same. Therefore, the general allegation made against the petitioners would not constitute an offence. Hence, continuing this type of prosecution is nothing but a waste of time.

9. Accordingly, this Criminal Original is allowed. C.C.No.408 of 2017 pending on the file of the learned Judicial Magistrate No.II, Coimbatore, is quashed.

10. It is reported that second accused is died and hence, charge sheet against him stands abated. Though this Criminal Original Petition has been filed by the accused 1 and 3, as there are no materials found

against A.2, the entire charge sheet is quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

shk/mvs

To

1. The Judicial Magistrate No.II, Coimbatore

2. The Inspector of police,
B3,Kattoor Police Station,
Coimbatore.

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.L.Mouli, Advocate, S.R.No.61287

CRL.O.P.No.23819 of 2017

SVI (CO)
CT 09/12/2021