



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.12.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P. (MD) Nos.16278 & 16281 of 2021

and

CRL.M.P. (MD) Nos.8708, 8709, 8711 & 8712 of 2021

WEB COPY

Thirumurthy ... Petitioner / Accused No.1
in Crl.O.P. (MD) No.16278 of 2021

N.Ramesh Rajan ... Petitioner / Accused No.3
in Crl.O.P. (MD) No.16281 of 2021

Vs.

1. The Inspector of Police,
Thallakulam police station,
Madurai City.
(Crime No.2107 of 2019) ... Respondent No.1/Complainant
in both petitions

2. Gurusamy ... Respondent No.2/Defacto Complainant
in both petitions

Common Prayer: Criminal Original petitions are filed under Section 482 of Cr.P.C, to call for the entire records pertaining to the charge sheet filed in C.C.No.667 of 2021 on the file of the learned Judicial Magistrate No.II, Madurai and quash the same as illegal as against the petitioners.

(in both Crl.O.Ps.)

For Petitioner : Mr.Satish Parasaran, Senior Counsel,
for Mr.Henri Tiphagne.

For R-1 : Mr.T.Senthil Kumar,
Additional Public Prosecutor.

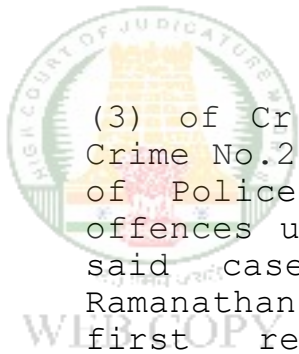
For R-2 : Mr.B.Saravanan

* * *

COMMON ORDER

Heard Shri.Satish Parasaran, the learned Senior counsel appearing for the petitioners and Shri.T.Senthil Kumar, learned Additional Public Prosecutor appearing for the first respondent and Shri.B.Saravanan, the learned counsel appearing for the second respondent / defacto complainant.

2.The petitioners herein are figuring as accused 1 and 3 in C.C.No.667 of 2021 on the file of Judicial Magistrate No.II, Madurai. The second respondent herein filed Cr.M.P. No.3969 of 2019 before the Judicial Magistrate No.II, Madurai alleging commission of certain offences by accused No.1 Thirumurthy and accused No.2 Ramanathan. A direction was issued under Section 156



(3) of Cr.P.C. on 02.11.2019 and pursuant to the said direction Crime No.2107 of 2019 was registered on 27.11.2019 by the Inspector of Police, Thallakulam police station, Madurai City for the offences under Sections 406, 420, 465 and 506(i) of I.P.C. In the said case, accused No.1 Shri.Thirumurthy and accused No.2 Ramanathan alone were shown as accused. After investigation, the first respondent filed final report not only against Shri.Thirumurthy and Ramanathan but also against Shri.N.Ramesh Rajan. The learned trial Magistrate took cognizance of the offences under Sections 406, 420, 506(i), 418, 468, 469, 384 and 109 of I.P.C. Summons were issued to the accused. They also entered appearance. Charges are yet to be framed. The petitioners without filing any application for discharge have filed these criminal original petitions for quashing the impugned proceedings by invoking the inherent powers of this Court.

3.The learned Senior counsel appearing for the petitioners took me through the typed set of papers and reiterated all the contentions set out in the memorandum of grounds and submitted that the impugned proceedings constitute a clear abuse of legal process. Per contra, the learned Additional Public Prosecutor as well as the counsel appearing for the defacto complainant submitted that no case for quashing has been made out.

4.The case of prosecution is as under:-

Thamizhavel Thiru.P.T.Rajan Commemoration Trust is running a marriage hall in the name and style of P.T.Rajan Thirumana Mandapam at Chokkikulam, Madurai. The hall is let out on rent. Five trustees including the petitioners herein are managing its affairs. The prosecution case is that the petitioners herein are actually in charge of its day-to-day administration. Even according to Shri.Thirumurthy (A1), the manager Ramanathan (A2) had received rental charges from prospective users and issued bogus receipts in some cases. For instance, the defacto complainant Shri.Gurusamy wanted to celebrate the wedding of his son in the said Thirumana Mandapam on 30.11.2019. He had paid a sum of Rs.2,95,000/- in cash to accused No.2 Ramanathan on 02.06.2019. In connection with the wedding arrangements, he visited the Mandapam on 11.08.2019. He was shocked to learn that the hall was not available on the proposed date for his son's wedding as it had been rented out to some other person. When Gurusamy wanted the money back, the hall authorities gave an evasive response. When he met Shri.Thirumurthy (A1) once again on 29.08.2019 at about 8.00 p.m., A1 is said to have taken the stand that Ramanathan was no longer in service and unless Gurusamy made a further payment of Rs.2,95,000/-, the hall will not be allotted to him. When Gurusamy exclaimed that it was not fair, A1 intimidated him. According to the prosecution, A1 Thirumurthy himself had given a complaint that Ramanathan had misappropriated the monies received from the customers to the tune of almost Rs.47.00 lakhs. Based on the complaint of Shri.Thirumurthy, an FIR

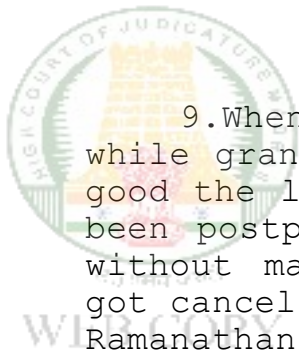


5.The learned Additional Public Prosecutor placed reliance on the decision reported in (2010) 12 SCC 254 (Babubhai and Others V. State of Gujarat) and contended that on a single cause of action, there can be only one First Information Report. According to him, the complaint given by Gurusamy cannot be viewed in isolation. The complaint given by Shri.Thirumurthy has been registered as Crime No.1194 of 2019 and is still being investigated by Central Crime Branch, Madurai City and that is why, the prosecution has filed a petition under Section 173(8) of Cr.P.C. in the present C.C.No.667 of 2021. He therefore submitted that the petitioners have to await its outcome. His stand is that the impugned prosecution must be amalgamated with the investigation pending in Crime No.1194 of 2019.

6.He would also state that apart from the defacto complainant Gurusamy, there are also other similarly affected individuals. He therefore called upon this Court to take into account the conduct of the petitioners herein and decline to invoke the inherent powers in their favour. He reiterated the well settled proposition that the inherent powers are meant for securing the ends of justice. He drew the attention of this Court to the recent decision of the Hon'ble Apex Court which hold that the power of quashing must be sparingly exercised and in exceptional cases.

7.The learned counsel appearing for the defacto complainant apart from endorsing the stand of the learned Additional Public Prosecutor pointed out that unfair and illegal acts were committed by the petitioners herein. He stated with considerable anguish that following the cancellation of the booking of the hall, the bride party felt that the things were not auspicious and called off the wedding itself. The defacto complainant not only had to look for an alternate venue but also a new bride for his son.

8.I carefully considered the rival contentions and went through the materials on record. The undisputed fact is that Gurusamy, the father of the bridegroom, made payment directly to the hall manager (A2 Ramanathan). It is obvious that A2 had pocketed the said amount and issued a fake receipt. Booking was done on 02.06.2019. A2 had played a similar mischief in the cases of quite a few other persons. When this came to light, A1 Thirumurthy gave a complaint against Ramanathan and the same was also registered as Crime No.1194 of 2019 on 03.08.2019. When Gurusamy met Thirumurthy on 29.08.2019, in all fairness, Thirumurthy should have owned up the responsibility. Instead, Thirumurthy had taken the stand that unless Gurusamy made a fresh payment, the hall will not be allotted to him on the scheduled date. It was this stand of Thirumurthy that led to registration of the impugned Crime No.2107 of 2019.



9. When Thirumurthy moved this Court seeking anticipatory bail, while granting relief, I had stipulated that Thirumurthy must make good the loss. I thought that the performance of marriage had only been postponed so that the hall could be engaged on another date without making fresh payment. Unfortunately, the marriage itself got cancelled and Thirumurthy could not atone for the misdeed of A2 Ramanathan.

10. Now the question that arises for consideration is whether the first respondent is justified in filing final report not only against Ramanathan but also against Shri. Thirumurthy and Shri. Ramesh Rajan. Gurusamy never had any grouse against Shri. Ramesh Rajan. Be that as it may, final report came to be filed against the petitioners herein and cognizance of the offences has also been taken.

11. In my view, Gurusamy could have filed a case against the hall management for deficiency of service before the Consumer Forum. He could have also filed a civil suit for damages. I fail to understand as to how a criminal case would lie against the trustees. More so, the case of the trustees is that the hall manager had committed criminal breach of trust and acts of forgery by issuing bogus receipts.

12. The ingredients of the offence of cheating are totally absent. The petitioners did not deceive Gurusamy. They did not fraudulently or dishonestly induce him to pay Rs.2,95,000/-. Gurusamy had come to the office of the marriage hall and paid the said amount to A2 Ramanathan in cash. The petitioners herein were nowhere in the scene. Even Gurusamy never alleged that the petitioners herein induced him to do anything. Hence, the offence under Section 418 of IPC will not lie.

13. The bogus receipt was issued by A2 Ramanathan directly to Gurusamy. When the hall management became aware of the criminal activities of A2 Ramanathan, they gave a complaint against him leading to Registration of Crime No.1194 of 2019. That clearly shows the bona fides on the part of the petitioners herein. It is earlier in point of time also. While Crime No.1194 of 2019 was registered on 03.08.2019, Gurusamy's complaint was registered only on 27.11.2019. Of course, he had made the complaint on 27.08.2019. The fact remains that Gurusamy's complaint is subsequent in point of time. Hence, the offences set out in Section 468 and 469 of IPC are also not made out.

14. Invocation of Section 383 IPC is absurd. Section 383 IPC can be invoked only if the accused puts the victim in fear of any injury either to himself or any other and thereby dishonestly induce the victim to deliver any property or valuable security. In this case, the first accused no doubt made an unfair demand on Gurusamy that he should make a fresh payment. This will by no means constitute the offence of extortion.



15.The offence of criminal intimidation will be made out only if the accused threatens the victim with any injury to his person, reputation or property. In this case, there is no such allegation. Merely because the first accused refused to consider the defacto complainant's request for refund, that would not convert the transaction to one of criminal intimidation. Courts have held that for the offence to be made out, a real threat should have been held out. The victim should have felt a sense of alarm [(1988) L.W. (Crl.) 178 (Noble Mohandass V. State)]. Nothing of the sort happened in this case. The elementary ingredients of the offence under Section 506(i) of IPC are absent.

16.A simple case of breach of contract has been given a criminal colour. Even in tort, the erring party can be fastened with liability only for proximate consequences and not the remote ones. Likewise, the petitioner-trustees cannot take the blame for the far-reaching matrimonial consequences that befell the bridegroom.

17.At this stage, the learned Senior counsel on instructions states that the petitioners would deposit a sum of Rs.2,95,000/- (Rupees Two Lakhs and Ninety Five Thousand only) to the credit of C.C.No.667 of 2021 on the file of the Judicial Magistrate No.II, Madurai within one week from the date of receipt of copy of this order. The defacto complainant Thiru.Gurusamy can withdraw the same without prejudice to his claim for higher compensation or damages before the Consumer Forum or the jurisdictional civil Court.

18.The impugned proceedings are quashed as far as the petitioners (A1 & A3) are concerned. It will go on against A2 Ramanathan. These criminal original petitions are allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

skm

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.

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



To:

1. The Judicial Magistrate No.II,
Madurai.
 2. The Inspector of Police,
Thallakulam police station,
Madurai City.
 3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- +1 C.C. to M/s.R.Karunanidhi, Advocate S.R.No.37542.
- +1 C.C. to M/s.B.Saravanan, Advocate, S.R.No.37539.

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