



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

Cr1.OP(MD)No.15930 of 2017

and

Cr1.MP(MD)No.10567 of 2017

1.Vasudevan

2.Selvakumari : Petitioners/Accused No.142

Vs.

1.State rep. by

The Inspector of Police,
Thoothukudi Police Station,
Thoothukudi District.

Crime No.691/2017

: Respondent/Complainant

2.Rathinam

: Respondent/Defacto Complainant

PRAYER: Petition filed under Section 482 of the Criminal Procedure Code to call for records relating to the case in Crime No.691 of 2017 on the file of the Inspector of Police, Thoothukudi South Police Station, Thoothukudi District and quash the same.

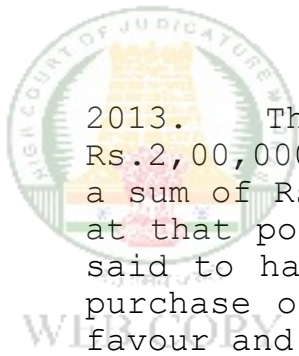
For Petitioners : Mr.R.Anand

For Respondents : Mr.R.Anandharaj,
Additional Public Prosecutor
for R.1
Mr.A.Shankararama Subramanian
for R.2

ORDER

This petition is filed by the petitioners to quash the First Information Report pending against them in Crime No.691 of 2017.

2. The case in Crime No.691 of 2017 was registered for the offence under Sections 420 & 506(ii) IPC, based on the complaint filed by the second respondent / defacto complainant before the learned Judicial Magistrate No.I, Tuticorin, in Cr.M.P.No.3606 of 2017 that the petitioners have entered into a sale agreement in favour of the second respondent on 12.04.2013 for the purpose of sale of a property and received a sum of Rs.4,00,000/- in the year



2013. Thereafter, she also parted with a sum of Rs.2,00,000/- on 11.05.2013 and on further assurance, she had parted a sum of Rs.6,95,000/- to one Ramasamy, who was the agreement holder at that point of time. In total, it appears that the complainant is said to have parted a sum of Rs.12,95,000/- to the accused for the purchase of the property. But the property was not executed in her favour and therefore, the petitioners / accused have executed a pro-note to the second respondent / defacto complainant on 11.04.2014. But, even then, they have not paid the money pursuant to the pro-note and therefore, the second respondent has lodged a complaint before the first respondent police on 12.09.2015, which was treated as petition enquiry in CSR.No.488 of 2015. In that complaint, the petitioners have agreed to pay the amount, but they have not paid the same.

3. Again, on 07.04.2017, when the second respondent sought for the amount to be paid back, the accused said to have threatened her with dire consequences, for which, the second respondent lodged a complaint through post to the concerned Superintendent of Police and thereafter, filed the private complaint before the concerned Judicial Magistrate under Section 156(3) Cr.P.C. The complaint filed before the concerned Judicial Magistrate in Cr.M.P.No.3606 of 2017 was forwarded for enquiry to the first respondent police and based on the same, the present First Information Report appears to have been registered as against the petitioners in Crime No.691 of 2017 on 22.08.2017 for the offence under Sections 420 & 506(ii) IPC.

4. Heard Mr.R.Anand, learned Counsel appearing for the petitioner; Mr.R.Anandharaj, learned Additional Public Prosecutor appearing for the first respondent; and Mr.Sankararama Subramanian, learned Counsel appearing for the second respondent.

5. The first and foremost contention raised by the learned Counsel appearing for the petitioner is that admittedly, it is purely a civil transaction where the defacto complainant is said to have parted with a sum of Rs.12,95,000/- for the purchase of a property and instead of filing a suit for specific performance, she has enquired with the petitioners and said to have obtained pro-note on 11.04.2014. Even for the non-payment of the amount pursuant to the pro-note, the defacto complainant instead of preferring a money suit before the competent civil Court, has preferred to lodge a complaint before the first respondent police in the year 2015, wherein, the complaint was treated as petition enquiry in CSR.No.488 of 2015. Subsequently, this complaint has been lodged for the incident said to have taken place on 07.04.2017, wherein, when the defacto complainant demanded the amount to be paid back, the petitioners said to have threatened her with dire consequences. For the incident said to have taken place on 07.04.2017, the petitioner opted to send a complaint through registered post to the concerned Superintendent of Police on 10.04.2017 and thereafter, filed the complaint before the learned Judicial Magistrate No.1,



Tuticorin, in Cr.M.P.No.3606 of 2017 under Section 156(3) Cr.P.C. The same was forwarded to the respondent police by the concerned Magistrate for enquiry and based on that, the case has been registered.

6. Whoever cheats and dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, such person shall be punished under Section 420 IPC. But, admittedly, in this case, which appears to be civil in nature, the respondent, instead of filing a suit for specific performance and a money suit, has lodged a criminal complaint in the year 2015 and filed the present private complaint through the concerned Judicial Magistrate under Section 156(3) Cr.P.C.

7. Insofar as the offence under Section 506(ii) IPC is concerned, the petitioners are said to have intimidated the complainant on 07.04.2017, when she sought for repayment of the loan amount. Admittedly, the petitioners are said to have executed a pro-note, based on which, the respondent can very well file a money suit for recovery of money. Instead, the respondent is said to have demanded the money in person and at that relevant point of time, the petitioners are said to have threatened with dire consequences. Be that as it may, for the incident said to have taken place on 07.04.2017, the defacto complainant lodged this complaint only on 10.04.2017, by a registered post, to the concerned Superintendent of Police. The defacto complainant has not approached the concerned police station. Even after this complaint on 10.04.2017, she has leisurely lodged the complaint before the concerned Judicial Magistrate under Section 156(3) Cr.P.C. and that complaint has been forwarded and case was registered in the month of August, 2017.

8. To attract an offence under Section 506 IPC, the victim must have felt the intimidation. In this case, the respondent appears to have not felt the intimidation, as she has not taken any steps immediately after the occurrence and only after two days, she sent the complaint and that too, through registered post to the concerned Superintendent of Police and thereafter, lodged the complaint through the concerned Judicial Magistrate. Therefore, this Court is of the view that the respondent has not felt the alleged intimidation.

9. In view of the foregoing discussions and reasonings, this Court is of the consideration opinion that the impugned proceedings is liable to be quashed. Accordingly, the case pending in Crime No.691 of 2017 on the file of the first respondent / Thoothukudi South Police Station, Thoothukudi is quashed.



10. In the result, this criminal original petition stands allowed. Consequently, connected miscellaneous petition is closed.

WEB COPY

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

- 1.The Inspector of Police,
Thoothukudi Police Station,
Thoothukudi District.
2. The Additional Public Procedure,
Madurai Bench of Madras High Court,
Madurai.

Cr1.OP(MD)No.15930 of 2017

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