



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.07.2021

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CrI.O.P(MD)No.17224 of 2017

and

CrI.M.P(MD)Nos.11283 and 11284 of 2017

WEB COPY

1.Hari Hara Rama Suthagar

2.Nayanar

... Petitioners / Accused Nos.15 and 16

[P-1 amended vide order dated
17.02.2021 in CrI.M.P(MD)No.1167 of
2021]

Vs.

1.The State of Tamil Nadu

represented by

the Assistant Commissioner of Police,

Palayamkottai,

[Crime No.6 of 2009]

...1st respondent/complainant

2.Sankar

.. 2nd respondent/ *defacto* complainant

Prayer: Petition filed under Section 482 of the Criminal Procedure Code, to call for the records relating to the case now pending in S.C.No.755 of 2016 on the file of the Principal Subordinate Judge, Tirunelveli District and quash the same.

For Petitioners : Mr.V.Kathirvelu, Senior Counsel

For Respondent : Mr.S.Ravi,

No.1

Standing Counsel for the State

For Respondent : Mr.S.Ramasamy,

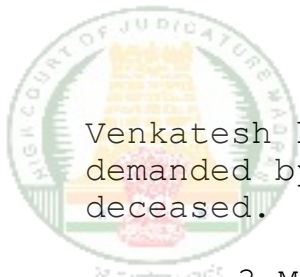
No.2

Legal Aid Counsel

ORDER

The petitioners, who are accused Nos.15 and 16 in S.C.No.755 of 2016 on the file of the learned Principal Subordinate Judge, Tirunelveli, have filed this petition to quash the proceedings pending against them.

2.At the instance of the second respondent *defacto* complainant, a case was registered under Section 174 CrPC in Crime No.6 of 2009 on the file of the respondent Police and later it was altered for the offence under Sections 4 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 and under Section 385 and 306 IPC as against the petitioners and 14 others that (i) Gopal Asari, (ii) his wife Santhanam @ Santhana Lakshmi, (iii) his son Palani Siva @ Chithambaram and (v)



Venkatesh have committed suicide in view of the exorbitant interest demanded by the petitioners and 14 others and thereby harassed the deceased.

3.Mr.V.Kathirvelu, learned Senior Counsel for the petitioners submitted that the petitioners are accused Nos.15 and 16 in this case. The case of the petitioners is entirely different from the other 14 accused, from whom the deceased have borrowed money. Whereas, the case of the prosecution is that the petitioners have placed order with Gopal Asari for making jewels and they have parted with him a sum of Rs.37,500/-. However, the said Gopal Asari did not comply with the said order for making jewel. Therefore, the petitioners are said to have abused the deceased. The learned Senior Counsel further submitted that from the entire prosecution case, except PW1 and PW5, there is no material connecting the petitioners with the offence. Even according to them, the petitioners have received a sum of Rs.37,500/- for making jewel and when the deceased failed to make the jewel within time, the petitioners have abused and also scolded them.

4.The learned Senior Counsel further submitted that accused No.15 is a Clerk in Panchayat Union Office and accused No.16 is his friend. These petitioners' names were not stated anywhere in the complaint by the second respondent / defacto complainant. Only at a later point of time, they have implicated the accused on 13.07.2009. The learned Senior Counsel raised a point that the 161(3) CrPC statements of all the witnesses were recorded on 03.01.2009 and except the statements of these PW1 and PW5, all other statements reached the Court on 04.01.2009 itself, whereas, the statements of these witnesses PW1 and PW5 alone have reached the Court on 13.07.2009. Therefore, it is clear that these petitioners have been roped in this case and the averments in their statements do not constitute any offence under the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003.

5.Mr.S.Ravi, learned Standing Counsel for the State by referring to the statement of PW5 would submit that no doubt that the petitioners have not lent any money to the deceased. However, they have demanded interest, since the deceased failed to make the jewels within the stipulated time. He also pointed out that PW5 son of the deceased Gopal Asari has stated specifically that on 31.01.2009 the petitioners abused PW5, on account of which, he also attempted to commit suicide. It can be tested only during the trial as to whether the petitioners had abused the deceased as alleged in the statements.

6.The notice ordered to the second respondent was returned as 'no residence' and there is no representation for the second respondent. Therefore, this Court by order dated 29.03.2021 appointed Mr.N.Syed Ali, as Legal Aid Counsel to defend the second



respondent. Since it appeared that the said Legal Aid Counsel has not taken any steps to collect the typed set of papers, this Court by order dated 23.06.2021, appointed Mr.S.Ramasamy, as Legal Aid Counsel to defend the *defacto* complainant / second respondent.

7.Mr.S.Ramasamy, learned Legal Aid Counsel submitted that the grounds raised by the petitioners can only be tested during the trial and the same cannot be the grounds to quash the final report.

8.This Court paid its anxious consideration to the rial submission and perused the materials placed on record.

9.The learned Senior Counsel pointed that the petitioners have not lent any money to the deceased for exorbitant interest but they have parted money with the deceased for the purpose of making jewels and therefore, it does not constitute any offence under the provisions of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003. But in 161(3) statements of PW1 and PW5 there are averments to the effect that these accused have demanded interest for the money given by them for making jewels and they have also abused the deceased, which can be tested only during the trial before the trial Court. Therefore, this Court is not inclined to quash the proceedings pending against these petitioners.

10.The occurrence had occurred in the year 2009 and the final report in this case was filed in the year 2016. The petitioners have approached this Court by filing this quash petition in the year 2017. In view of the pendency of this criminal original petition, the proceedings as against the other accused has not been proceeded further.

11.Considering the nature of the offence and the passage of time, this Court deems it fit to direct the trial Court to proceed with the trial on a day to day basis and conclude the same, without being influenced by any of the observation made in this order. Such an exercise shall be completed within a period of six months from the date of receipt of a copy of this order.

12.At this juncture, the learned Senior Counsel sought indulge of this Court to dispense with the personal appearance of the first petitioner /accused no.15 that he is working as a Clerk in Panchayat Union Office and it would be difficult for him to appear for each and every hearing before the Court. Considering the charge levelled against accused No.15, his personal appearance before the trial Court is dispensed with and he should file an affidavit before the trial Court that whenever his presence is required, he would appear before the trial Court and they would not dispute the identity, during the trial.



13. In fine, this criminal original petition is dismissed.

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Sd/-

Assistant Registrar (CS II)

/ /2021

Sub Assistant Registrar(CS)

dsk

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.

To

1. The Principal Subordinate Judge,
Tirunelveli.
2. The Assistant Commissioner of Police,
Palayamkottai,
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P(MD)No.17224 of 2017
05.07.2021

RC (14.07.2021) 4P-4C