



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.06.2021

CORAM:

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

Crl.OP(MD)No.17744 of 2017 and

Crl.MP(MD)No.11592 of 2017

WEB COPY

1.Jeyaraman
2.Ramachandran
3.Mohan Rajaram

: Petitioners/Accused Nos.1 to 3

Vs.

1.State Rep. by
Inspector of Police,
Masarpatti Police Station,
Thoothukudi District. ... 1st Respondent/Complainant
Cr.No.20/2015

2.Vellaichamy ... 2nd Respondent/Defacto Complainant

PRAYER: Petition filed under Section 482 of the Criminal Procedure Code to call for the records in C.C.No.233 of 2016 on the file of the learned Judicial Magistrate, Vilathikulam, Thoothukudi District and quash the same.

For Petitioners : Mr.M.Maran

For Respondents : Mr.S.Ravi,
Standing Counsel for the State for R.1

Mr.R.Paranjothi
for Mr.K.Baalasundram for R.2

ORDER

This criminal original petition is filed by the petitioners to quash the charge sheet pending against them in C.C.No.233 of 2016 before the learned Judicial Magistrate, Vilathikulam, Thoothukudi District.

2. The petitioners are brothers and the second respondent / defacto complainant is their brother-in-law. The case of the prosecution is that the second respondent's wife, Ramalakshmi, who is the sister of the petitioners, is having a share in the family properties of the petitioners. After the demise of the petitioners' father, the petitioners have approached their sister, Ramalakshmi and have arranged a partition deed and also executed the partition deed in the Sub Registrar Office, without disclosing the value of the properties, by giving her a meagre amount of Rs.20,000/- alone. According to the second respondent / defacto complainant, the properties are worth several lakh rupees, however, by suppressing



the same, the petitioners have obtained the signature of his wife in the partition deed and thereby, cheated him and his wife.

3. When the second respondent has approached the petitioners with regard to this, the petitioners said to have abused him with filthy language. The first petitioner is said to have attempted to assault him and it was prevented at the instance of his Driver, one Muthuraja [LW3]. For the said incident took place on 20.01.2015, the second respondent lodged a complaint before the respondent police on 25.02.2015 and the same was registered in Crime No.20 of 2015 for the offence under Sections 294(b), 406, 420, 506(i) IPC. The first respondent Police conducted investigation and filed the final report as against the petitioners for the offence as follows:

- first petitioner / first accused - 294(b), 406, 420 IPC; and
- petitioners 2 & 3 / accused 2 & 3 - 406, 420 IPC.

Aggrieved, the petitioners have approached this Court.

4. Mr.M.Maran, learned Counsel for the petitioners submitted that the alleged cheating is arising out of the execution of a partition deed, which was registered in the Sub Registrar office in the year 2012 and for the said registration of the document, a complaint has been lodged only in the year 2015, as if the petitioners have cheated the second respondent's wife by not disclosing the value of the properties. The second respondent's wife is the own sister of the petitioners and the document, which was registered, is a partition deed. The second respondent's wife, who is a family member of the petitioners, is well aware of the properties and knowing well about the properties and its value, she has voluntarily executed the partition deed before the Sub Registrar, Pudur, along with the petitioners on 13.12.2012. Even in the partition deed, it has been specifically mentioned that though there are some difference in amounts among the parties in the partition deed, the parties have agreed for the partition and have executed the partition deed.

5. Learned Counsel further submitted that having executed the partition deed in the year 2012 before the Sub Registrar, Pudur, the second respondent / husband of Ramalakshmi, in order to extract some money from the petitioners, has lodged this complaint in the year 2015 as if the petitioners have cheated their sister without disclosing the value of the properties. Excepting the second respondent and his wife, there is no other witness in this case. He further submitted that the petitioners' sister, Ramalakshmi / wife of the second respondent is also no more and there is no purpose in allowing the trial to proceed in this case.

6. Mr.R.Paranjothi, learned Counsel for the second respondent / defacto complainant submitted that the value of the properties are very huge and suppressing the same, the signature of the second respondent's wife, Ramalakshmi, has been obtained in a fraudulent manner. The second respondent raised an issue with regard to

(b) , 406 a

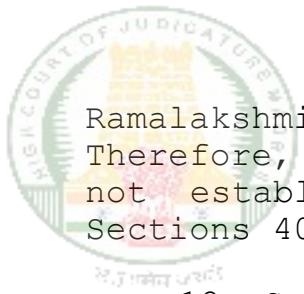
8. The final report is filed for the offence under Sections 294 (b), 406 and 420 IPC, based on two incidents that was taken place in the years 2012 and 2015. In the first incident, the petitioners' sister Ramalakshmi along with the petitioners have executed a partition deed in a Sub Registrar office at Pudur in the presence of the Sub Registrar. As per the clause of the deed, the parties are aware of the value of the properties and they have shared the properties and have executed the partition deed to their full satisfaction. After three years, the second incident has taken place on 20.01.2015, wherein, when the second respondent / defacto complainant went to the petitioners' house for raising certain issue with regard to the partition deed, which was registered in the year 2012 and at that time, the petitioners said to have abused him with filthy language and also criminally intimidated.

"406. Punishment for criminal breach of trust

10. Section 420 IPC reads as follows:

Whoever cheats and thereby dishonestly induces the person deceived 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, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

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



Ramalakshmi is also no more to defend the prosecution case. Therefore, this Court is of the view that the second respondent has not established the ingredients to attract the offence under Sections 406 & 420 IPC.

12. Section 294 IPC reads as follows:

"294. Obscene acts and songs

Whoever, to the annoyance of others-

(a) Does any obscene act in any public place, or

(b) Sings, recites or utters any obscene song, ballad or words, in or near any public place,

Shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.]"

13. With regard to the second incident is concerned, it was taken place on 20.01.2015 inside the house of the petitioners, wherein, the second respondent / defacto complainant, who is the aggressor, has approached the petitioners with the allegation that they have cheated his wife by paying a paltry sum for the partition. Admittedly, the said Ramalakshmi has not accommodated the second respondent at that point of time and that it was his Driver [LW2], who was present at the time of occurrence. At the relevant point of time, the first petitioner is said to have abused the second respondent with filthy words. But the alleged filthy words has not been disclosed either in the complaint or in the final report. Excepting the second respondent and his driver, there is no other witness for the same. This incident also appears to have been made inside the house of the petitioners and therefore, the offence under Section 294(b) IPC will not attract in this case.

14. Since the offences under which the petitioners are charged would not attract at all, this Court is inclined to quash the impugned charge sheet. Accordingly, the charge sheet in C.C.No.233 of 2016 on the file of the learned Judicial Magistrate, Vilathikulam, Thoothukudi District is hereby quashed. In fine, this criminal original petition stands allowed. Pending miscellaneous petitions, if any, shall stand closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

gk



To

1.The Judicial Magistrate,
Vilathikulam, Thoothukudi District.

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

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Cr1.OP(MD)No.17744 of 2017
30.06.2021

DKS(CO)
TR(08.07.2021) 5P 4C