



CrI.O.P.No.7640 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	02.11.2022
Pronounced on	09.11.2022

CORAM

THE HON'BLE Dr.JUSTICE G.JAYACHANDRAN

CrI.O.P.No.7640 of 2019

and

CrI.M.P.No.4180 of 2019

1.Selvam
2.Sathasivam

... Petitioners

-Vs.-

1.State represented by
The Inspector of Police,
Kattumannarkoil Police Station,
Kattumannarkoil,
Cuddalore District.

2.M.Balaji

.. Respondents

Criminal Original Petition filed under Section 482 of Code of Criminal Procedure to call for the records and quash the charge sheet in C.C.No.172 of 2018 on the file of the District Munsif Cum Judicial Magistrate, Kattumannarkoil, Cuddalore District.



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For Petitioners :Mr.Perumbulavil Radhakrishnan

For Respondents :Mr.N.S.Suganthan,
Government Advocate (Criminal side)
for R1
No appearance for R2

ORDER

This Criminal Original Petition has been filed by the accused persons to quash the criminal case in C.C.No.172 of 2018 on the file of the learned District Munsif Cum Judicial Magistrate, Kattumannarkoil, Cuddalore District, which is the outcome of the FIR registered against them in Crime No.163 of 2018 dated 02.05.2018 by the first respondent on the complaint given by the second respondent.

2. The crux of the final report leading to framing charges under Sections 341 and 392 of IPC against the first petitioner and under Section 392 read with Section 109 of IPC against the second petitioner is as below:-

The *de facto* complainant is a lorry driver. For loading sand from the sand yard under licensee M/s Devi Constructions, he made online



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booking and went with the lorry bearing registration number TN 47 AB 4135 to the quarry site on 02.05.2018 at about 08:00 am. At that time, the first petitioner/Selvam, who is working in the yard under the licensee, on seeing the permit sought Rs.1000/- as bribe to load sand. When the *de facto* complainant queried why he should pay Rs.1,000/- when he have a valid permit, Selvam/first petitioner informed, that the yard owner Sadasivam/second petitioner had instructed to demand Rs 1,000/- to load the sand or else not to allow them to load sand from the yard. Under threat, the first petitioner robbed Rs.1,000/- from the *de facto* complainant and also collected permit slips from two other lorry drivers, who did not have money to pay.

3. The first respondent, on receiving the complaint, had registered a case in Crime No.163 of 2018 against these petitioners for offences under Sections 341 and 384 IPC. On completion of investigation, the final report was filed on 16.08.2018, before the learned Judicial Magistrate. On perusal of the documents filed along with the final report, the learned Judicial Magistrate had framed charges under Sections 341 and 392 IPC against the first petitioner, against whom *prima facie*



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material found available for wrongful restrain and for robbing the *de facto* complainant at the instigation of the second petitioner and against the second petitioner for abetting the first petitioner to commit robbery.

4. The learned counsel appearing for the petitioner/accused submitted that the case is foisted due to business rivalry and the learned Judge, who framed the charge against these petitioners, has not properly appreciated the material placed by the Investigating Officer. The confession statements obtained by force has been considered by the trial Court for framing charges.

5. The learned counsel would also states that neither the permit slip nor Rs.1,000/- alleged to have been rabbed, were recovered by the Investigating Officer to *prima facie* establish that there was robbery under threat and wrongful restrain. Further relying upon the lorry loading register retained at Muttam Sand Quarry Dipot, the learned counsel submitted that the loading of sand in the said dipot started only after 04:00 pm on 02.05.2018 and therefore, the alleged wrongful restrain and extortion or robbery, on 02.05.2018 at about 08:00 am, as alleged in the



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FIR, on the face of it found to be false. The petitioners, who are regulating movement of the trucks for loading the sand, have been falsely implicated with ulterior motive. Therefore, he seeks for quash of the final report taken on file in C.C.No.172 of 2018 on the file of the learned District Munsif Cum Judicial Magistrate, Kattumannarkoil.

6. Per contra, the learned Government Advocate (Criminal side) appearing for the State would submit that on the specific complaint, that though the *de facto* complainant had valid permit slip for loading sand, the petitioners had collected Rs.1,000/- illegally under force and the lorries were wrongfully restrained, a case has been registered and investigated. In the course of the investigation, it was found that the averments made in the complaint are true and hence, the final report was filed based on the statements given by the witnesses including the *de facto* complainant.

7. The learned Judicial Magistrate, who had perused the documents filed along with the final report, had rightly framed charge against the first petitioner for the offences under Sections 341 and 392 of IPC and as against the second petitioner/second accused, for the offences



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under Section 392 read with 109 IPC, since material for wrongful restrain and robbery by the first accused is *prima facie* available and the first petitioner being an employee under the second petitioner and had committed the said alleged offences on the instructions of the second petitioner. The other facts like non-recovery of permit slip and money extorted are to be considered during the course of trial. Whether the omission to recovery of these material objects will be fatal for proving charges.

8. The learned Government Advocate (Criminal side) contending that while considering the petition to quash the final report, the Court has to look whether there is any *prima facie* material to try the offenders and it is needless to satisfy that the materials will be sufficient for conviction. Referring Section 390 IPC and the explanation given thereunder, the learned Government Advocate (Criminal side) submitted that extortion become robbery, if the offender at the time of committing extortion put person under instant wrongful restrain. Therefore, it is needless to allege any fear of instant death or instant hurt, which are the other two circumstances, under which extortion became robbery.



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9. Section 390 of the Indian Penal Code reads as below:

“390. Robbery —In all robbery there is either theft or extortion. When theft is robbery. —Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carving away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

When extortion is robbery —Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation —The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.”

10. Section 341 of the Indian Penal Code reads as below:-

“Section 341 Punishment for wrongful restraint :—

Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees,



or with both.”

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11. Thus, on reading the explanation for extortion and wrongful restraining, it is clear that if any money is extorted after wrongful restrain, also amount to robbery. It is not necessary by the said wrongful restraint, such person is put to fear of death or hurt, they are other two alternate ingredient to attract the offence of robbery.

12. The *prima facie* material placed by the prosecution and being satisfied, the trial Court framed charge under Section 341 and 392 IPC against the first petitioner and under Section 392 read with 109 IPC against the second petitioner for the complaint of the *de facto* complainant alleging that he was restrained from loading sand without bribing Rs.1,000/- and the money was forcibly taken away from him by the first petitioner after restraining him from loading the sand in his lorry. The statement of first accused is that he was instructed by second accused to collect Rs.1,000/- from each of the lorry owner before loading the sand, even if they have valid permit. The second accused is the owner of the sand yard.



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13. It is not disputed that the *de facto* complainant came with the lorry to the sand yard and sand was loaded in his lorry on that day. The sand loading register relied by the petitioner proves that the lorry bearing registration No.TN47 AB 4135 was loaded with sand on 02.05.2018 at about 04:34 pm. The *de facto* complainant name is shown against the entry as driver of the said lorry. While *prima facie* material is available that the *de facto* complainant came to this sand yard for loading on 02.05.2018 at 08:00 am but he was restrained from loading sand, inspite of permit slip and only after extorting Rs.1,000/-, he was permitted to load sand on that day at about 04:34 pm, it is a matter of dispute facts for trial, whether offences of wrongful restrain and robbery committed or not. The case without trial cannot be summarily decided.

14. For the said reasons, this Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petition is also closed.

09.11.2022

Speaking/Non-speaking order
Index: Yes/No
Internet : Yes/No



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To

- 1.District Munsif Cum Judicial Magistrate,
Kattumannarkoil,
Cuddalore District.
- 2.The Inspector of Police,
Kattumannarkoil Police Station,
Kattumannarkoil,
Cuddalore District.
- 3.The Public Prosecutor,
High Court, Madras.



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Dr.G.JAYACHANDRAN.J.,

nsa

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