

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.O.P.No.13128 of 2022
and
Crl.M.P.Nos.7053 & 7054 of 2022

T.Ravikumar

... Petitioner / Accused

Vs

Ponnusamy.K

... Respondent / Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.225 of 2021, on the file of the Judicial Magistrate No.II, Dharmapuri and quash the complaint proceedings pending against the petitioner.

For Petitioner : Mr.H.Rajasekar
For Respondent : No Appearance

O R D E R

This petition has been filed to call for the records in C.C.No.225 of 2021 for the offences under Sections 294(b), 420, 506(i) of IPC on the file of the Judicial Magistrate No.II, Dharmapuri and quash the proceedings pending against the petitioner.

2. Originally, the private complaint was filed under Section 156(3) of Cr.P.C. to issue direction to conduct investigation. However, the learned Judicial Magistrate No.II, Dharmapuri treated it as a complaint under Section 200 of Cr.P.C and examined the complainant and other two witnesses and took cognizance for the offences under Sections 294(b), 420, 506(i) of IPC.

3. Learned counsel for the petitioner submitted that the entire complaint is nothing but an abuse of process of law. The learned Magistrate have not applied his mind properly and there

was no allegations available on record in the form of statements of witnesses to take cognizance. Therefore, he submitted that the entire transactions is purely civil dispute and no offence is made out. Therefore, he seeks to quash the complaint pending on the file of the learned Judicial Magistrate No.II, Dharmapuri.

4. Despite the service of notice and the name is printed, the defacto complainant has not appeared in person or through counsel.

5. On the perusal of the entire complaint as well as the statements recorded by the learned Judicial Magistrate No.II, Dharmapuri, originally the complaint filed under Section 156(3) indicates that the respondent has invested an amount of Rs.5,00,000/- (Rupees Five Lakhs only) to become a partner in the Granite business and also entered into an agreement and the petitioner/accused agreed to produce Granite license to do quarrying, within three months. However, he has not obtained any license. Therefore, when the complainant/Respondent demanded the amount, the accused has failed to pay the amount. Thereafter, when the respondent demanded the amount, the accused had made threat.

6. The statements were recorded by the learned Judicial Magistrate No.II, Dharmapuri and in the entire statement, he never whispered anything about the intention of the accused to cheat the complainant from the very inception. Similarly, there are no averments made in the statements for the deception, fraudulent Act or dishonest inducement to pay the amount, whereas the entire statements indicate that the amount has not been paid by the accused. When the complainant sought for return of amount, the accused made threat. Except that there are no other averments or statements made by the complainant or in the case of other two witnesses.

7. Therefore, in the absence of any allegations with regard to the deception, fraudulent or dishonest inducement on the part of the accused, which made the defacto complainant to part with the money, the offence under 420 IPC would not be attracted. Similarly, entire allegations with regard to the threat and abusive language, there is no statements made by the witnesses as to the nature of the abusive language and threat. Except the general statements that the accused made threat, no other statements were made. Therefore, mere general allegations of nature of threat and abusive language without specific words, which really caused apprehension or danger to the life of the petitioner, the offences under Sections 294(b), 420, 506(i) of IPC will not be attracted. The learned Judicial Magistrate No.II, Dharmapuri without considering the above statements mechanically took cognizance without applying the mind properly.

8. In such view of the matter, this Court is of the view that the civil dispute has been given a colour of criminal case and the learned Judicial Magistrate No.II, Dharmapuri has also not applied his mind properly. Therefore, the complaint in C.C.No.225 of 2021 on the file of the learned Judicial Magistrate No.II, Dharmapuri is quashed and it is well open to the de-facto complainant to go to the Civil Court as per law for recovery of money.

9. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

rgi/ham

To

1. The Judicial Magistrate No.II,
Dharmapuri.
2. -do through- The Chief Judicial Magistrate No.II,
Dharmapuri.

+lcc to Mr.H.Rajasekar, Advocate, S.R.No.39563

Crl.O.P.No.13128 of 2022
and
Crl.M.P.Nos.7053 & 7054 of 2022

RSV[co]
NSK/11/07/2022