IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2022

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

Crl.O.P.No.18612 of 2019 and
Crl.M.P.No.9446 of 2019

T.Elankavi ... Petitioner

/vs/

1.State Rep. by
The Inspector of Police,
Thiruthuraipoondi Police Station,
Tiruvarur District.
(Crime No.541 of 2017)

2.Rajavadivel
... Respondents

Prayer : Criminal Original Petition has been filed under Section 482 of Cr.P.C. to call for the records pertaining to Crime No.541 of 2017 on the file of the respondent police and quash the same.

For Petitioner ... Mr.P.Rajkumar Pandian

For Respondents ... Mr.A.Gopinath,
Govt. Advocate (Crl.Side) for R1

No appearance for R2

ORDER

This Criminal Original Petition has been filed to call for the records pertaining to Crime No.541 of 2017 on the file of the respondent police and quash the same.

2. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) appearing for the first respondent.

3. The petitioner is the accused in Crime No.541 of 2017. The case of the prosecution is that a complaint has been given by the second respondent on the allegation that the second respondent had parked his vehicle at the Lorry Owners' Association's Lorry Stand. On 28.08.2017 at about 11.00 a.m., the petitioner came to the place of occurrence and abused the defacto complainant and took away his lorry by threatening him. The second respondent has already availed a loan of Rs.4,12,500/- from one Sethia Credit Corporation for purchasing the lorry and also entrusted the RC Book of the lorry and promissory note and other documents while availing the said loan. Despite he had paid the major portion of the loan, the Finance Company did not discharge him from the loan and continued to

demand exorbitant interest and threatened the second respondent that they would kill him.

4. The learned counsel for the petitioner submitted that for the very same occurrence, the second respondent had given the previous complaint on 28.08.2017; since there are no ingredients to make out an offence against the petitioner, no action has been taken against the said complaint; subsequently, the second respondent has filed a petition under Section 156(3) of IPC before the learned Judicial Magistrate, Thiruthuraipoondi and the said petition was also dismissed; now once again on the very same facts and allegations, the second respondent had given a fresh complaint and FIR has been registered; so far as this petitioner is concerned, he is only the Agent of the Finance Company and he has a limited role of taking away the vehicle whenever borrowers commit default in repaying the loan; since there is no overtact on the part of the petitioner, the proceedings against the petitioner should be quashed.

5. The learned Government Advocate (Crl.Side) appearing for the first respondent submitted that the petitioner accompanied with the Finance

Company charges exorbitant rate of interest; despite the second respondent has paid the substantial portion of the loan, the Finance Company claims exorbitant interest and the vehicle has also been taken away illegally; there are two more accused involved in this case and they have obtained an order of Anticipatory Bail; since stay is pending, no further action has been taken against the said accused; since there are sufficient ingredients available on record to register the case against the accused and the lot of facts have to be unearthed, the petition is liable to be dismissed.

6. On perusal of the records, it is seen that the very same complainant had given the earlier complaint on 28.08.2017. Since the police has not taken any action on the said complaint, he filed a petition under Section 156(3) on 07.10.2017 before the learned Judicial Magistrate, Thiruthuraipoondi. The learned Judicial Magistrate has passed a detailed order on 14.11.2017 and dismissed the petition. Now the second respondent has once again filed a complaint on 15.11.2017 for the very same occurrence stated in the earlier complaint dated 28.08.2017. The allegations made in the previous complaint are that the vehicle was stolen

by some one and the complainant later came to know that it was the petitioner. But in the present complaint, it was stated that on the very same day of the occurrence, the vehicle was forcibly taken away in front of the complainant himself.

7. The second respondent himself had admitted in both the complaints that he had availed the loan of Rs.4,12,500/- from Sethia Credit Corporation for the purpose of purchasing the lorry and as security for the said loan, he had handed over the RC Book to the Finance Company and he has also executed other loan documents. The petitioner has executed the loan agreement dated 28.02.2015 and in which, he has agreed that in the event of default in payment of the loan, the Finance Company can seize the vehicle.

8. The loan is a type of hire purchase and the agreement is also a hire purchase agreement. The installment that has been paid by the second respondent would be towards the loan as well as the rent for the vehicle. A detailed written contract has been entered into between the Sethia Credit

Corporation and the second respondent. So far as this petitioner is concerned, he is an Agent in the Finance Company and who had come to the spot to take away the vehicle of the second respondent, since he had committed default in repaying the loan. Even if there is any materials to show that the interest imposed on the loan obtained by the second respondent is exorbitant, that can only bind the Finance Company and not the petitioner who is an Agent.

9. It is to be noted that on the earlier complaint given by the second respondent, it is stated that the vehicle was stolen, but subsequently, he stated that the petitioner has taken away the vehicle by threatening him. Whatever may be the contradictions, the fact remains that the petitioner had taken away the vehicle only in accordance with the terms of the hire purchase agreement entered into between the second respondent and the Sethia Credit Corporation.

10. The petitioner has also been charged for the offence under Section 25(1A) of the Arms Act along with the Money Lenders Act and for the offence under Section 294(b), 506(ii) and 384 I.P.C.

11. It has been already stated that the petitioner that he is the Agent and he is not a money lender. Hence he cannot be made liable for any offence under the Tamil Nadu Money Lenders Act.

12. The second respondent had made allegations that he was threatened by the petitioner with a gun that he would kill him. But it is not stated that the petitioner had shown the gun towards the second respondent and threatened him. The allegation is too general and formal without the minimum specific details.

13. The petitioner owns a gun license and only because of that reason, it cannot be imagined that the petitioner had used the gun to threaten the second respondent. Hence, I do not find any material ingredients excepting the fact that the petitioner owns a gun license. Hence

the offence under Section 506(ii) IPC is not made out.

14. For the offence under Section 294(b), there should be ingredients to show that the petitioner had abused the second respondent in filthy language in public place. The allegation of the second respondent with regard to the said offence is that the petitioner had abused him and his driver. Since the above allegation has been stated subsequent to the petitioner's act of taking away the lorry, it apparently appears to be an exaggeration. The second respondent being a party to the hire purchase agreement, had agreed to hand over the vehicle in case of any default in paying the rentals.

15. In order to make out the offence under Section 384 IPC., the petitioner ought to put the second respondent under threat or induce him to deliver a person or property or valuable security. At the risk of repetition, It is reiterated that the petitioner had taken away the vehicle only in terms of the hire purchase agreement and not out of threat or anything else.

16. Even though the petitioner is not liable for the other offences falling under Tamil Nadu Money Lenders Act and the Tamil Nadu prohibition of charging exorbitant Interest Act, the Finance Company may be liable, in case there are sufficient materials to make out the offence of this nature against the Finance Company. But it is brought to the knowledge of this Court that the persons in-charge of the Finance Company have filed Anticipatory Bail Applications and obtained bail. In view of the above stated reasons, I feel it is appropriate to direct the first respondent to complete the investigation as against the other accused within a period of two months from the date of receipt of a copy of this order. So far as this petitioner is concerned, I feel the proceedings should be quashed in order to meet out the ends of justice.

17. In the result, this Criminal Original Petition is allowed and the proceedings in Crime No.541 of 2017 on the file of the respondent police is quashed in so far as the petitioner is concerned. The investigation in respect of the other accused, if any, as submitted by the learned Government Advocate (Crl.Side) shall go on. Consequently, connected

miscellaneous petition is closed.

21.12.2022

Index: Yes/No
Internet: Yes/No
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To

1.The Inspector of Police,
Thiruthuraipoondi Police Station,
Tiruvarur District.

2.The Public Prosecutor,
High Court, Madras.

R.N.MANJULA ,J.

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