IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2022

CORAM:

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

Crl.O.P.No.18510 of 2019
and
Crl.M.P.No.9376 of 2019

1.Bleswar Singh
2.Vijayalakshmi ..Petitioners

Vs.

1.State by
The Inspector of Police,
R-8, Vadapalani Police Station,
Chennai.
(Crime No.517 of 2018)

2.Valavan ..Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records to quash the FIR in Crime No.517 of 2018 on the file of the Inspector of Police, R-8, Vadapalani Police Station, Chennai District.

For Petitioners : Mr.P.Narayana Prasadh

For R1 : Mr.N.S.Suganthan
Government Advocate (Crl.Side)

For R2 : Mr.N.Naresh

ORDER

This Criminal Original Petition is filed to quash the criminal complaint registered on 02.10.2018 in Crime No.517 of 2018 by the Vadapalani Police Station, Chennai.

2. The First Information Report which reads as under:-

The *de facto* complainant running a business in Aqua Water under the name and style of "Arunachalam Aqua Industries". The 1st petitioner dealing in machineries to Aqua plant has been supplying machineries to the *de facto* complainant since 2010 receiving payment in advance. Between the year 2014-2015, the *de facto* complainant had advanced Rs.13,86,000/- for supply of machineries. The 1st petitioner did not supply the machineries but closed his industry in the year 2016. When the *de facto* complainant repeatedly insisting for payment of money, the petitioners came to the house of the *de facto* complainant on 01.10.2018 at about 7.00 p.m., and gave life threat to him. Therefore, for cheating, breach of trust and criminal intimidation, the impugned complaint has been registered.

3. The learned counsel appearing for the petitioners would submit that since 2010, the 1st petitioner herein has been supplying machineries for the Aqua Plants to the *de facto* complainant. In the year 2014, before closing the industry, accounts were settled and a sum of Rs.13,86,000/- was returned to the *de facto* complainant by way of three cheques as under:-

S.No.	***Cheque No.***	***Cheque Amt***	***Cheque Date***	***Bank Name***	***Bank Branch***
1.	521690	Rs.3,00,000/-	29.12.2014	IndusInd Bank	Madipakkam
2.	521691	Rs.6,00,000/-	30.01.2015	IndusInd Bank	Madipakkam
3.	521692	Rs.4,86,000/-	20.02.2015	IndusInd Bank	Madipakkam

But for some reasons, except the first cheque, the other two cheques got bounced, for which, the *de facto* complainant issued statutory notice and the matter was amicably settled between the parties and there is no further proceedings initiated in respect of other two cheques for Rs.6,00,000/- and Rs.4,86,000/- respectively. Thus, the entire transaction between them got settled during the month of April 2015. While so, suppressing the said fact, First Information Report registered based on the complaint lodged in the year 2018, complaint admitting the money transaction took place in the year 2014-2015. It is a malicious prosecution to harass the petitioners, hence liable to be quashed.

4. The learned counsel for the 2nd respondent/*de facto* complainant has filed a counter, wherein, it is stated that the 1st petitioner promised to supply water filling machine received Rs.13,86,000/-, but failed to supply machineries. In the year 2014, the company run by the 1st petitioner has took over by his wife, the 2nd petitioner herein and she promised to repay the money received by her husband. On repeated demand, three cheques were given, out of which, only one cheque for Rs.3,00,000/- was honoured. The other two cheques totally for a sum of Rs.10,86,000/- could not be realized. In the said circumstances, since the petitioners were repeatedly dodging and evading the payment of money, repayment of the money entrusted to cheat the *de facto* complainant from the inception has been clearly made out to be tried for offence under Section 406 I.P.C., (criminal breach of trust) and Section 420 I.P.C., (cheating). When the *de facto* complainant was repeatedly insisting for payment of money, the petitioners came to the house of the *de facto* complainant and threatened him with dire consequence, hence offence under Section 506(i) I.P.C., is made out.

5. The learned Government Advocate (Crl.Side) appearing for the State would submit that it is a case registered on the complaint alleging criminal breach of trust, cheating and criminal intimidation. The facts are to be enquired and whatever defence alleged by the petitioners/accused herein will be considered in the course of investigation. Since the petitioners have not participated in the investigation, police has not proceeded further to verify the veracity of the complaint. Since prima facie case has been made out, F.I.R., has been registered, the police has not proceeded further in view of the interim stay granted by this Court.

6. Heard the learned counsel for the petitioners, the learned Government Advocate (Crl.Side) for the State and perused the counter affidavit of the 2nd respondent/*de facto* complainant.

7. Reading of the complaint discloses that, there was transaction for purchase of machineries between the *de facto* complainant and the 1st petitioner, who was running industries in the name of “Sri Sai Solutions”. In the complaint, it is alleged that Rs.13,86,000/- was paid to the 1st petitioner between 2014-2015 and further alleged that no machinery supplied to them, the 1st petitioner closed down the industries. In the said circumstances, on 01.10.2018, the 1st petitioner and his wife came to his house and threatened him for making repeated demand of the money back. This complaint has been registered on 02.10.2018 on next day.

8. The complaint on the face of it indicates that for money transaction which has happened between 2014-2015, the complaint has been lodged in the month of October 2018. Now the petitioners who are arrayed as accused state that they had already discharged the liability of Rs.13,86,000/- through three cheques, out of which, one cheque realised on presentation and the other two cheques though returned for "Insufficient of Fund", the cheque amount has been settled privately. That is the reason, the *de facto* complainant did not proceed against them under Section 138 of Negotiable Instruments Act. The statutory notice issued by the *de facto* complainant through his lawyer dated 02.03.2015 also indicates if any money payable, same has been discharged through 3 cheques and if the cheques not honoured the legal proceedings ought to have been taken within the period of limitation prescribed. The allegations that the petitioners came to the house of the *de facto* complainant and threatened him is inherently improbable. The said defence even if not taken into account, the very F.I.R., clearly indicates that to recover the time barred debt has been given criminal colour as if the petitioners came to the house of the *de facto* complainant and threatened the *de facto* complainant after three years of termination of contract.

9. In the said reason, this petition to quash the First Information Report, it being malicious prosecution given criminal colour to the civil transaction that too barred by limitation to harass the petitioners is liable to be quashed.

10. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected Criminal Miscellaneous Petition is closed.

21.11.2022

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

rpl

To,

1. The Inspector of Police,
R-8, Vadapalani Police Station,
Chennai.

2.The Public Prosecutor,
High Court, Madras.

Dr.G.JAYACHANDRAN,J.

rpl

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