

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :27.04.2022

PRONOUNCED ON :13.06.2022

CORAM:

THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Original Petition No.27903 of 2019
and
Crl.M.P.No.14869 of 2019

- 1.Mohammed Saalim,
S/o.A.Mohammed Theri Basha,
Owner of Shalim Shoe Private Limited,
No.143/3, M.B.D., Road, Ranipet,
Vellore District.
 - 2.Marshal Suresh,
Chief Executive Officer,
Shalim Shoe Private Limited,
No.143/3, M.B.D., Road,
Ranipet, Vellore District.
- 1 & 2 ... Petitioners/Accused

Versus

- 1.The State Represented by
The Inspector of Police,
Ranipet Police Station,
Ranipet, Vellore District.
(Ref. Crime No.610/2019, dated 03.10.2019)
... 1st Respondent/Complainant
- 2.K.Rajesh Kumar,
S/o.R.Krishnan,
Running "Q-Maxx" Security Agency,
No.A/2, M.B.D., Road,
V.C. Mottur, Ranipet,
Vellore District.
...2nd Respondent/De-facto
Complainant

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, seeking to call for the records and quash the First Information Report in Crime No.610/2019 on the

file of the Inspector of Police, Ranipet Police Station, Vellore District registered for offences under Section 294(b), 420 and 506 (ii) of IPC.

For Petitioners : Mr.C.Arunkumar
For R1 : Mr.S.Vinoth Kumar
Government Advocate (Crl.Side)
For R2 : Mr.K.Venkatesan

ORDER

This Criminal Original Petition had been filed to quash the First Information Report in Crime No.610/2019 on the file of the Inspector of Police, Ranipet Police Station, Vellore District registered for offences under Section 294(b), 420 and 506 (ii) of IPC against these Petitioners.

2.The learned Counsel for the Petitioner submitted that the complaint earlier given by the Second Respondent/De-facto Complainant was registered as C.S.R.No.792 of 2019 and the same was subsequently closed. Therefore, the Second Respondent/De-facto Complainant addressed a letter to the Inspector of Police, Ranipet Police Station stating that he will appear for further enquiry on 14.09.2019 regarding repayment of the amount of Rs.2,00,000/-. He further submit that the second Respondent/De-facto Complainant filed Criminal Original Petition in Crl.O.P.No.23157 of 2019 seeking to register a case. This Court disposed of the same with a direction to the second Respondent/De-facto Complainant to work out his remedy as per the direction of this Court in Crl.O.P.No.13681 of 2018. Thereafter, he filed a private complaint. The learned Judicial Magistrate taken cognizance of the sworn statement and based on which, direction was given to the Respondent therein to register the case against the Accused. Challenging the said order, the Petitioners herein filed in Crl.O.P.No.26954 of 2019. In the meanwhile, as the FIR was registered in Cr.No.610 of 2019, the said Criminal Original Petition was withdrawn by these Petitioners. Thereafter, challenging the said First Information Report in Crime No.610 of 2019 this Petition had been filed.

3. The learned Counsel for the Petitioner also furnished rulings in support of his contention wherein taking cognizance of the sworn statement itself is attacked by the learned counsel for the Petitioner. Further, he would argue that the ingredients of Sections 294 (b), 506 (i) and 420 of IPC are not at all attracted as per the Provision of the IPC. It is the further submission that even if the complainant's sworn statement is to be accepted on its face value, on the date and

time of occurrence, the obscene words alleged to have been used by the Petitioners herein was within the premises of the Company which is a private premises and it has not caused annoyance to the Complainant and other public. Therefore, Section 294 (b) of IPC is not attracted. Similarly, allegation under Section 506 (i) of IPC is also made with an ulterior motive. Even if the complainant's allegations are to be accepted on its face value, if there had been a threat to his life by the Petitioners herein, he ought to have sought police protection in the very same sworn statement. Therefore, it was not a real threat. Therefore, the ingredients of Section 506(i) of IPC is not at all attracted as per the reliance placed by the learned counsel for the Petitioner in MANU/TN/4445/2018 in the case of S.Ramesh Vs. State and Others, MANU/TN/1917/2015 in the case of S.Selva Kumar Vs. State and Others and Crl.O.P.No.2993 of 2012 in the case of Sree Kaladevi Vs. S.S.Michale - 18.12.2017. Further, his main attack is with regard to the ingredients of Section 420 of IPC. He placed reliance on the Contract Agreement dated 19.12.2018. He had been in business with the De-facto complainant from 2015 to 2018. There is no outstanding due, because of the developments, he was unable to pay the dues from August, 2018 to February, 2019. For the dispute regarding outstanding payment, he had preferred a complaint giving criminal colour to a civil dispute for which Section 420 of IPC is not at all attracted. Using the words of the Hon'ble Supreme Court, it is a criminal complaint used as a ploy by the De-facto complainant, with the help of the Police as collecting agent. The learned Counsel for the Petitioners further submits that the Company is in liquidation. Therefore, FIR is to be quashed.

4. The learned Counsel appearing for the Second Respondent/De-facto Complainant made his oral submissions. As per his submissions, the second Respondent/De-facto Complainant is running a Security Agency and he had provided Security Guards to the Company of the Petitioners. In due course of time, there were dues of salary to the Security Guards engaged by the Petitioners. Therefore, the De-facto complainant approached him for the same. While he was in talks with the Petitioners, the Petitioners abused him and also ill-treated him. Since the De-facto complainant is running Security Agency, he has to pay the salary to the Security Guards and therefore, he had borrowed money from his acquaintance and paid the Security Guards employed by him who was engaged in Petitioners' Company. Therefore, the De-facto complainant had preferred the complaint before the Ranipet Police. Since Police had not taken the complaint, he had approached the learned Judicial Magistrate, Ranipet and based on the sworn statement and materials furnished by the De-facto complainant, the learned Judicial Magistrate was satisfied that the prima facie case was made out against the Petitioner herein. Therefore, the learned Magistrate has

ordered registration of FIR. Based on the Order of the learned Magistrate, FIR had been registered. He further submits that since order of stay had been granted by this Court, Investigation could not be proceeded further.

5.The learned Counsel for the second Respondent/De-facto Complainant objects to the argument of the learned Counsel for the Petitioners regarding the liquidation which does not affect the second Respondent/De-facto Complainant as the services were engaged to provide Security Guards to the Petitioners and complainant may be permitted to proceed with the case and to dismiss this Petition.

6.The learned Counsel for the Second Respondent/De-facto Complainant in this case reiterated the submission of the learned Counsel for the Petitioners stating that the Petitioners herein had issued him a series of cheques and also directed him not to present it before the Bank concerned until Petitioners informs him. Therefore, he could not present it. At the same time, the second Respondent/De-facto complainant had to pay salary to his Security Guards who have been employed and who have been engaged by the Petitioners in his factory. Salary has to be paid by the Second Respondent himself. For the Petitioners, the Second Respondent/De-facto Complainant himself had borrowed money and paid the Security Guards who had been employed by him. Under those circumstances, when the borrowers of the De-facto Complainant approached him for repayment of dues, he had no other choice except to approach the Petitioners. At that time, the Petitioners are alleged to have abused and threatened the De-facto Complainant. When the De-facto complainant approached the Police, the Police had not registered a case considering the status of the Petitioners. Therefore, the De-facto complainant/Respondent -2 did not have any other option but to approach this Court. Further, the learned Counsel for the second Respondent/De-facto Complainant submitted that the conduct of the Petitioners is also to be observed by this Court. Only when the second Respondent/De-facto Complainant had approached the Court of the learned Judicial Magistrate, on the date of giving sworn statement, the Petitioners had paid Rs.2,00,000/- which had been fairly conceded by the second Respondent/De-facto Complainant in his sworn statement. Therefore, what are all submitted by the learned Counsel for the Petitioners cannot at all be accepted. He further submits that there are Special Units in the Rural Districts and as per the guidelines of this Court to the learned Magistrate concerned, the learned Magistrate having jurisdiction over their Police Station, cannot direct Special Units to register the FIR. If this Petition is allowed and if the FIR is quashed, it will amount to miscarriage of justice.

7. On consideration of the submission of the learned Counsel for the Petitioners, the vehement objection of the learned Counsel for the Second Respondent/De-facto Complainant and the learned Government Advocate (Crl. Side) for the First Respondent that the points raised by the learned Counsel for the Petitioners cannot at all be accepted to quash the FIR. The materials placed before this Court by the learned Counsel for the Petitioners are the sworn statement, complaint preferred by the second Respondent and the contents of the FIR in Crime No.610 of 2019. The FIR is registered under Section 294(b), 420 and 506(i) of IPC. It is the case of the second Respondent/De-facto Complainant that he is running a security agency which engaged in providing security to private establishments. The services of the second Respondent/De-facto Complainant was utilised based on the contract entered into between the Petitioners herein, who are arrayed as Accused 1 and 2, who are owner and chief Executive Officer of Shalim Shoe Company Private Limited, a company situated and operating from Ranipet, Vellore District now Ranipet District. For payment of salary of the security guards provided by the Shalim Shoe Company Private Limited, as per the contract, the Petitioners 1 and 2 ought to have paid the second Respondent/De-facto Complainant as per the contract between them. But they had failed to provide the same to the second Respondent/De-facto Complainant. Till the amount for the payment of salary for the security guards are realised from the Petitioners herein, the second Respondent/De-facto Complainant, who is the owner of the security agency, had to pay his employees/security guards. Therefore, the second Respondent/De-facto had obtained loan from various acquaintances and when they pressurised him for repayment of the loan, he had no other option but to seek the outstanding dues from the Petitioners 1 and 2. Therefore, he had entered into the office of the Petitioners at Ranipet for the above purpose on 07.08.2019 on which date the Petitioners herein are alleged to have pushed him by the neck uttering abusive words attracting offences under Section 294b of IPC and also threatening him that if he ever enters into the office of the Company, he will be finished off, meaning he will be killed either by them or by their agents. Therefore, he had no other go than to approach the Ranipet Police.

8. When he lodged a complaint with the Ranipet Police, they had not registered FIR even though ingredients of the offence were made out because the Petitioners herein are influential people. Therefore, the first Respondent was reluctant to register the same. Therefore, the second Respondent/De-facto Complainant was forced to approach the Court of the learned Judicial Magistrate, Ranipet. Based on the sworn statement of the second Respondent/De-facto Complainant, the learned Judicial

Magistrate, Ranipet had taken cognizance of the complaint of the second Respondent/De-facto Complainant and had issued directions under Section 156 of Cr.P.C. directing the Ranipet Police to register the FIR and proceed with the investigation. When the learned Judicial Magistrate passed orders directing registration of the First Information Report, the Petitioners herein, who were arrayed as Accused, had approached this Court and filed this Criminal Original Petition seeking to quash the FIR. It is the contention of the Petitioner that the contract between the Petitioners and second Respondent/De-facto Complainant was entered into on 19th December, 2018. Prior to that, from the year 2015 onwards, there had been contract between the Petitioners and the second Respondent/De-facto Complainant but only in the year 2018, there were outstanding. It is to be noted that the Petitioners 1 and 2 had issued cheques bearing Nos.903335, 903336, 903337, 903338, 903339 and 903340 to the second Respondent/De-facto Complainant for realization of the outstanding dues but he was warned not to present it till the Accused 1 and 2/Petitioners herein, who are arrayed as Accused in the FIR, inform the second Respondent/De-facto Complainant to present it. Since the second Respondent/De-facto Complainant had availed loan from his acquaintances to pay the salaries of his employees who have been sent as security guards to provide security to Shalim Shoe Company Private Limited, when the acquaintances pressurised him for repayment of the loan, he had no other go than to approach the Petitioners herein for the same. Therefore, the conduct of the Petitioners after issuing cheques to the second Respondent/De-facto Complainant, threatening him not to present the same attracts provisions of Section 402 of IPC. The materials are available as per the sworn statement of the second Respondent/De-facto Complainant.

9.As quoted by the learned Counsel for the second Respondent/De-facto Complainant in the reported case of the Hon'ble Supreme Court in Lalita Kumari -vs- Government of Uttar Pradesh and others reported in 2013 (6) CTC 353. Also, when cognizance of offence are made out, the reluctance of the Ranipet Police to register the FIR on the basis of the complaint given by the second Respondent/De-facto Complaint had made him to approach the learned Judicial Magistrate, Ranipet, with a Private Complaint under Sections 156 (3) of Cr.P.C. to register the FIR. The learned Judicial Magistrate applied his mind and directed investigation. Therefore, the submission of the learned Counsel for the Petitioners/Accused 1 and 2 that the offences mentioned in the FIR are not at all attracted cannot at all be accepted. Also, the arguments of the learned Counsel for the Petitioners that the Company is in liquidation also cannot be accepted because of the fact that the Petitioners having entered into a contract with the second Respondent/De-facto

Complainant for the services of the security guard to provide security to the Petitioners' Company and handing over cheques and not allowing the second Respondent/De-facto Complainant to withdraw the money and when the second Respondent/De-facto Complainant, who is running the Security Agency is unable to pay his employees/security guards from the amount that is due from the Petitioners herein, he is cornered by the creditors from whom he had borrowed money to pay the salary of his employees. When he approached the Petitioners, the Petitioners pushed him out of the office where the office is within the compound of the Company or adjoining a public road cannot be considered at this stage as pointed out by the learned Counsel for the second Respondent/De-facto Complainant. Only during the investigation based on the statement of the witnesses recorded by the Investigation Officer, the Investigation Officer has the discretion to lay final report after collecting sufficient materials and filing report will indicate the offences committed by the Petitioners herein, based on the materials available with the Investigation Officer. Therefore, only based on the surmises and conjectures, this Court cannot quash the FIR at this stage.

10.As per the reported ruling of the Hon'ble Supreme Court in the case of State of Haryana -vs- Bhajan Lal reported in 1992 Suppl.(1) SCC 335 guidelines had been issued to the High Courts not to exercise the extraordinary powers available to the High Court leniently and it shall be exercised sparingly. The learned Judicial Magistrate had directed the Ranipet Police to register an FIR and proceed with the investigation had observed prima facie offences made out. Therefore, the learned Judicial Magistrate directed the Ranipet Police to register the FIR. Under those circumstances, before proceeding with the investigation, when there are materials prima facie available, it is not fair on the part of this Court to exercise the extraordinary power and scuttle the investigation. The vehement objection of the learned Counsel for the second Respondent/De-facto Complainant and the learned Government Advocate (Crl. Side) for the Prosecution is found acceptable and reasonable in the light of the guidelines issued by the Hon'ble Supreme Court in the reported ruling of the State of Haryana -vs- Bhajan Lal reported in 1992 Suppl.(1) SCC 335.

11.In the light of the above discussion, the rulings placed by the learned Counsel for the Petitioners are rejected.

12.In the result, this Criminal Original Petition is dismissed.

The Investigation Officer is directed to proceed with the investigation and file final report before the Court of the

learned Judicial Magistrate, Ranipet within a reasonable period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

SRM

To

- 1.The Inspector of Police,
Ranipet Police Station,
Ranipet, Vellore District.
- 2.The Judicial Magistrate,
Ranipet, Vellore.
- 3.Do Through The Chief Judicial Magistrate,
Vellore.
- 4.The Public Prosecutor,
High Court, Chennai.

+1cc to Mr.C.Arun Kumar, Advocate, S.R.No.35140
+1cc to Mr.K.Venkateswaran, Advocate, S.R.No.35305

Cr1.O.P.No.27903 of 2019

RLD(CO)
SB(13/07/2022)