



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2022

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P.NO.32637 OF 2019

AND

CRL.M.P.NOS.13903 OF 2021 & 17998 OF 2019

1.S.Mathivanan
2.M.Cathrine Minola

... Petitioners/
Accused 1 & 2

Versus

1. Inspector of Police,
J-5, Shastri Nagar Police Station,
Chennai.
(Crime No.663/2019)

2. R.Praboji

... Respondents/
Complainant/Defacto Complainant

Prayer:

This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code to call for the records in Crime No.663/2019, J-5, Shastri Nagar Police Station, and quash the same.

For Petitioners : Mr.Niranjana Rajagopalan

For Respondents : Mr.R.Vinothraja
Government Advocate (crl.side) for R1
Mr.Charles Prem Kumar for
Mr.K.Hariharan for R2

O R D E R

This Criminal Original Petition has been filed to call for the records in Crime No.663/2019, J-5, Shastri Nagar Police Station, and quash the same.



2. The learned Counsel for the Petitioners submitted that due to transaction, there was a loan obtained by the Petitioners from the second Respondent/defacto Complainant and they could not repay the same. The Petitioners are builder and civil contractor. Since they had suffered loss, they were unable to repay the same and the loan transaction has been converted into a criminal case by inducing a complaint before the J-5, Shastri Nagar Police Station. Based on the complaint, an First Information Report was registered in Crime No.663 of 2019 of Shastri Nagar Police Station, Adyar District Chennai City Police. It is the further contention of the learned Counsel for the Petitioners that the ingredients of offence under Section 406 IPC and the ingredients of the offence under Section 420 of IPC are not attracted and they are contradictory to each other. In those circumstances, the First Information Report registered by the Respondent Police had to be quashed.

3. The learned Counsel for the second Respondent/defacto Complainant invites the attention of this Court to the contents of the First Information Report. He had extensively read out from the contents of the First Information Report. It is the submission of the learned Counsel for the second Respondent/defacto Complainant that the first Petitioner himself introduced to the second Respondent/defacto Complainant through one common friend. After such introduction, he used to pick up conversation with the second Respondent/defacto Complainant over phone as though interested in the business transaction of the second Respondent/defacto Complainant who was running two wheeler Dealer ship for Royal Enfield Bullet motorcycles. After getting the details of business from the second Respondent/defacto Complainant, the first Petitioner made the second Respondent/defacto Complainant to believe that he can arrange 14 motorcycles, that can be carried in lorry at a time at concessional rate, that will be helpful to the second Respondent/defacto Complainant in his business and for which the first Petitioner stated that his relative is an employee of Royal Enfield in top position as an official and has represented that he can make arrangements for the purchase of Royal Enfield Motorcycles from the Royal Enfield at concessional rate, for which he demanded money. Accordingly, the second Respondent/defacto Complainant parted amount of Rs.15,00,000/-. But as per the representation of the first Petitioner, he was unable to arrange the vehicles. Therefore, the second Respondent/defacto Complainant was agitated. He went and enquired with the Petitioner. The Petitioner reply was not satisfactory to the second Respondent/defacto Complainant. Therefore the second Respondent/defacto Complainant and his friend went to the office of the Royal Enfield at the Plant and made enquiries with the officials therein regarding the arrangements for purchase of the vehicles by the Dealers at



concessional rate. The officials at Royal Enfield Plant replied that no such concessional rates are offered and if the second Respondent/defacto Complainant had believed some representation, he had been cheated. Only at that stage, the second Respondent/defacto Complainant came to know that he had been taken for a ride by the Petitioners herein. Immediately, he contacted the Petitioners and the Petitioners replied that none of their relatives were working in Royal Enfield Company in top official position and they requested the second Respondent/defacto Complainant that they will get things done. Subsequently also, they did not heed to the request of the second Respondent/defacto Complainant for return of the money. Therefore, he had no other go than to approach the Respondent Police and prefer a complaint, based on which, the First Information Report had been registered. Further the second Respondent/defacto Complainant submitted that this Court exercising discretion under Section 482 Cr.P.C. cannot consider the submissions of the learned Counsel for the Petitioners at this stage and it is for the Investigation Officer to register the case and proceed with the investigation.

4. The learned Government Advocate (Crl.side) relied on the averments of the First Information Report and submitted that the arguments of the learned Counsel for the Petitioners cannot be considered at this stage. Since the First Information Report is at initial stage of investigation, where the criminal law is set in motion, it is for the Investigation Officer to collect materials in the course of the investigation and lay the final Report. He further submitted that this Court exercising discretion under Section 482 Cr.P.C. cannot quash the First Information Report on the submissions of the learned Counsel for the Petitioners that offences under Section 406 of IPC and Section 420 of IPC are contradictory to each other.

5. If the Investigation Officer collects sufficient materials and it is on the satisfaction of the Investigation Officer that enough materials had been gathered and the investigation had been completed, it is for him/her to lay the final report of the investigation as per the materials available with him/her, either under Section 406 of IPC or Section 420 of IPC and to strike out one of the offences regarding the Section of Law, as per the advice given by the learned Assistant Public Prosecutor, who is the Legal Advisor of the Investigation Officer and not for this Court to consider those materials at this stage. Also, the learned Government Advocate (Crl.side) vehemently objects to quashing the First Information Report on the ground that, the Hon'ble Supreme Court in the reported ruling in State of Haryana and Ors. Vs. Bhajan Lal and Ors reported in 1992 Supp (1) SCC 335 had deprecated the High Courts exercising discretion under Section 482 of Cr.P.C. quashing the



investigation at the initial stage and had laid down the guidelines to be followed while exercising discretion of extraordinary powers under Section 482 of Cr.P.C.

6. On consideration of the rival submissions and from the typed set of papers available in the petition, it is found that the submissions of the learned Counsel for the Petitioners can be considered only as a defence available to the Petitioner/Accused, after the final report of the Respondent Police is laid before the Court of the learned Judicial Magistrate during trial and not at this stage. Therefore, as rightly pointed out by the learned Counsel for the second Respondent/defacto Complainant and the learned Government Advocate (Crl.side) based on the guidelines issued by the Hon'ble Supreme Court in State of Haryana and Ors. Vs. Bhajan Lal and Ors reported in 1992 Supp (1) SCC 335, it is not a fit case to exercise discretion under Section 482 Cr.P.C. and quash the First Information Report at the initial stage. Hence, this Criminal Original Petition is dismissed, directing the Investigation Officer to proceed with the investigation and file the final report within a reasonable period. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

mpl

To

1. The Inspector of Police,
J-5, Shastri Nagar Police Station,
Chennai.
2. The Public Prosecutor,
High Court, Chennai.

+1cc to Mr.G.R.Associates, Advocate, S.R.No.26817

Crl.O.P.No.32637 of 2019
and
Crl.M.P.Nos.13903 of 2021 & 17998 of 2019

NMI (CO)
PM/10/05/2022