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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.04.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K. ILANTHIRAIYAN**

Crl.O.P.(MD) No.6035 of 2022

and

Crl.M.P(MD) No.4210 and 4211 of 2022

1. Nagalakshmi

2. Rajesh Kumar

...Petitioners/Accused No 1 & 2

Vs.

1. State rep. by

The Inspector of Police,
District Crime Branch,
Theni .

Cr.No.05/2021

...1st Respondent/Complainant

2.Renuga

...2nd Respondent/
Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records pertaining to the impugned Charge sheet in C.C.No. 73 of 2021 pending on the file of the Learned Judicial Magistrate Court, Theni and quash the same.

For Petitioners : Mr.AK.Azagarsami

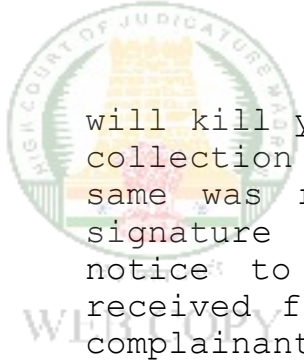
For Respondents : Mr.R.M.Anbunithi

No.1 Additional Public Prosecutor

ORDER

The Criminal Original Petition has been filed to quash the proceedings in C.C.No. 73 of 2021 pending on the file of the Learned Judicial Magistrate Court, Theni.

2.The Case of the prosecution is that the defacto complainant and petitioners are known to each for past 4 years. Due to that relationship the 1st petitioner borrowed a sum of Rs.50 lakhs for the 2nd petitioner studies and to conduct a civil case. On 28.01.2018, the 1st petitioner had issued a cheque in favour of defacto complainant on HDFC Theni branch dated on 01.12.2018 in number 000004 and the 1st petitioner assured she will repay the above amount and return back the cheque from the defacto complainant. But the 1st petitioner not repaid the amount for which 03.12.2018, the 2nd respondent lodged a complaint before the Superintendent of Police, Theni and the same was forwarded to the 1st respondent (DCB Theni). But at the time of enquiry the 1st petitioner not cooperated with investigation and the 1st petitioner informed to police that she will face the dispute through the court of law. Subsequently the defacto complainant came out of 1st respondent that the 1st petitioner threatened the defacto complainant that if you demand the money I



will kill you. Thereafter the 2nd respondent sent the cheque for collection in her bank namely federal bank on 18.12.2018 and the same was returned with an endorsement on 19.12.2018 as Drawer's signature differs. Subsequently the 1st petitioner sent a legal notice to defacto complainant on 24.12.2018 and the same was received from the defacto complainant on 26.12.2018 later defacto complainant to know that the 2nd petitioner put his signature as 1st petitioner sign. Later petitioners criminally intimidated the defacto complainant. Later defacto complainant lodged a complaint to Superintendent of Police but no action was taken against the petitioner. Hence the defacto complainant filed a 156(3) of CrPC petition before learned Judicial Magistrate, Theni and the same was forwarded to 1st respondent and this case was registered in Cr.No.5/2021 dated 17.02.2021 u/s. 468, 471, 420, 294(b), 506 (I) of IPC. Later the 1st respondent filed a challan before Judicial Magistrate, Theni in C.C.No.73/2021 U/s. 468, 471, 420, 294(b), 506 (I) of IPC against the 1st petitioner and 420, 294(b), 506(i) r/w. 109 of IPC against the 2nd petitioner.

3. The learned Counsel appearing for the petitioners would submit that the petitioners are innocent and they have not committed any offence as alleged by the prosecution.

4. The learned Additional Public Prosecutor would submit that the trial has been commenced and some of the witnesses have been examined in this case.

5. Heard the learned counsel appearing on either sides.

6. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **Crl.A.No.579 of 2019** dated **02.04.2019** in the case of **Devendra Prasad Singh Vs. State of Bihar & Anr.**, wherein it is held as follows:-

" 12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.



7. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in **Crl.A.No.1572 of 2019** dated 17.10.2019 in the case of **Central Bureau of Investigation Vs. Arvind Khanna**, wherein, it has been held as follows:

"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

8. Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** in **Crl.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner



known to law would arise only at a later stage....."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioners cannot be considered by this Court under Section 482 Cr.P.C.

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9. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No. 73 of 2021 pending on the file of the Learned Judicial Magistrate Court, Theni. The petitioners are at liberty to raise all the grounds before the trial Court. However, the personal appearance of the first petitioner is dispensed with and she shall be represented by a counsel after filing appropriate application. However, the first petitioner shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment.

10. Accordingly, this criminal original petition is dismissed. Consequently connected miscellaneous petition in CrI.M.P(MD) No.4210 of 2022 stands dismissed and CrI.M.P(MD) No.4211 of 2022 stands partly allowed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1. The Judicial Magistrate, Theni.
2. The Inspector of Police,
District Crime Branch,
Theni
3. The Additional Public Prosecutor
Madurai Bench of Madras High Court

CrI.O.P.(MD) No.6035 of 2022

and

CrI.M.P(MD) No.4210 and 4211 of 2022

01.04.2022

MGJ(20.04.2022) 4P 4C