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Crl.O.P(MD)No.2096 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.03.2022

PRONOUNCED ON : 04.04.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD)No.2096 of 2022

and

Crl.M.P(MD)No.1569 of 2022

1.N.Mohamed Farook
2.J.Aashiq Imaran
3.J.Imthiyas Mansoor

... Petitioners/Accused Nos.1, 2 & 4

Vs.

1.State through,
The Inspector of Police,
Koodal Pudur Police Station,
Madurai.
(Crime No.16 of 2022)

... 1st Respondent/Complainant

2.Nagarani

... 2nd Respondent/
Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in relation on the complaint filed by the second respondent with the first respondent on 08.01.2022 at 20.35 hours and registered as a case in Crime No.16 of 2022 alleging offences under Sections 406, 294(b), 323 and 506(i) of I.P.C and read with Section 4 of Prohibition of Harassment of Women Act and quash the same.

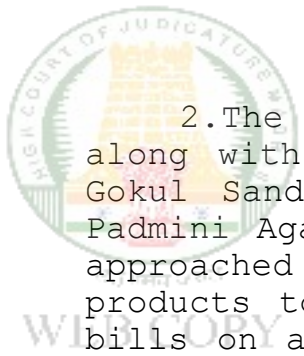
For Petitioner : Mr.S.R.Rajagopal
for Mr.S.MP.Amalan

For R - 1 : Mr.K.Sanjai Gandhi
Government Advocate (Crl. Side)

For R - 2 : Mr.M.Sricharan Rangarajan
for Mr.S.Ramsundarvijayraj

ORDER

This Criminal Original Petition has been filed to quash the FIR registered in Crime No.16 of 2022 on the file of the first respondent for the offences under Sections 406, 420, 294(b), 323 and 506(1) of I.P.C read with Section 4 of Tamil Nadu Prohibition of Harassment of Women Act as against the petitioners.



2.The second respondent lodged a complaint alleging that she along with her husband are involved in the supply of Good Night, Gokul Sandal Powder, Medimix Soap, Johnson and Johnson Products, Padmini Agarbathi's and VVD Coconut oil. While being so, they were approached by the accused persons and placed orders to supply products to their shop and they assured that they will settle the bills on a monthly credit basis. Thereby, they induced the second respondent to supply the goods. Believing the said words, the second respondent started supplying goods from the year 2015, however, after some period, the accused failed to settle the bills on a monthly basis and when the second respondent approached the accused persons to settle the amount, they promised that the pending amount will be like a bank deposit and it would be settled soon. They also requested to supply the goods without any interruption on the assurance that they will settle the bill. Accordingly, so far from 22.06.2015 to 22.07.2021, the second respondent supplied goods to the tune of Rs.47,15,828/-. When the second respondent asked for payment on 25.11.2021, the accused persons threatened them with dire consequences and abused them with a filthy words. On receipt of the said complaint, the first registered the F.I.R in Crime No.16 of 2022 for the offences under Sections 406, 420, 294(b), 323 and 506 (1) of I.P.C read with Section 4 of Tamil Nadu Prohibition of Harassment of Women Act as against the petitioners.

3.The learned counsel appearing for the petitioners would submit that the petitioners have been procuring the products and commodities for its store in Koodal Nagar and Vilangudi on a wholesale basis from the second respondent agencies for the past 10 years. They have made timely payments towards the goods supplied by way of cash and cheques. The payments made towards the goods supplied are reflected in the statement of accounts and in the Income Tax returns filed by the first petitioner herein. While being so, the products supplied by the second respondent were of bad quality and as such, the petitioners stopped purchasing the goods from their agencies. Due to which, false complaint has been foisted as against the petitioners. Even assuming that there is any amount payable by the petitioners on the supply of goods, it is completely business transaction and civil in nature. Admittedly, all along the petitioners are paying amounts for the goods supplied by them. If at all any due from the petitioners, it would not amount to attract any offences as alleged in the F.I.R. Further, the alleged occurrence took place on 25.11.2021, whereas the second respondent lodged the complaint only on 08.01.2022. There is no sufficient reasons stated by the second respondent to lodge the belated complaint.

4.The learned counsel appearing for the petitioners further submitted that the incident is alleged to have been taken place at the residence of the first respondent at Karimedu at about 06.00 am. The complaint alleges dues of amounts ever since from the year 2015 and there to be a running transaction. Therefore, the present



law. The allegations in the complaint does not constitute any cognizable offence as alleged by the prosecution, since the ingredients of the offences under Sections 406, 420, 294(b), 323 and 506(1) of I.P.C read with Section 4 of Tamil Nadu Prohibition of Harassment of Women Act are not made out.

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5.Per contra, the learned counsel appearing for the second respondent would submit that from the inception of business, the accused persons intended to deceive the second respondent. The accused persons had fraudulent and dishonest intention at the time of making promise and cheated the second respondent. Therefore, the offence under Section 420 is clearly made out as against the petitioners. Immediately after occurrence ie., on 25.11.2021, the second respondent repeatedly making complaints. It is also evident from the representation sent by the petitioner, dated 26.12.2021, on the complaint lodged by the second respondent there was enquiry conducted by the Assistant Commissioner of Police, Koodal Nagar. Therefore, there is no delay in lodgement of the complaint as against the petitioners. He further submitted that it is only a F.I.R and it has to be investigated in depth to find out the truth. In support of his contention, he also relied upon the Judgment of this Court in Crl.O.P(MD)No.12726 of 2019, Crl.O.P.No.17540 of 2019 and Crl.O.P.No.20545 of 2014, wherein this Court cited the Judgment of the Honourable Supreme Court of India passed in ***Crl.A.No.255 of 2019, dated 12.02.2019 in the case of Sau. Kamal Shivaji Pokarnekar Vs. State of Maharashtra and others*** and held that in the First Information Report if there is any specific allegation, the same has to be investigated. The FIR is not an encyclopedia and it need not contain all facts. It cannot be quashed in the threshold when it discloses *prima facie* commission of cognizable offence. Further held that the investigating agency has to step in to investigate, grab and unearth the crime in accordance with the procedures prescribed in the Code.

6.Heard the learned counsel appearing for the petitioner, the learned Additional Public Prosecutor appearing for the first respondent and the learned counsel appearing for the second respondent and perused the materials available on record.

7.On a perusal of the materials available on record revealed that the second respondent lodged the complaint on 08.01.2022 alleging that the second respondent along with her husband are in the business of supply of provisions such as Good Night, Gokul Sandal Powder, Medimix Soap, Johnson and Johnson Products, Padmini Agarbathi's and VVD Coconut oil. They were approached by the petitioners to supply the goods on 22.05.2015 and they assured that they will settle the bills on a monthly credit basis. Based on their orders, the second respondent supplied goods till 22.07.2021. The petitioners failed to pay the sum to the tune of Rs.47,15,828/-. When it was questioned by the second respondent, the petitioners on



25.11.2021 threatened them with dire consequences and also abused them with filthy language.

8. Admittedly, the second respondent lodged the complaint only on 08.01.2022 for the occurrence took place on 25.11.2021. There is no valid reasons for lodgment of belated complaint from the second respondent. Though the learned counsel appearing for the second respondent would submit that on the representation submitted by the petitioner revealed about the enquiry conducted by the Assistant Commissioner of Police, Koodal Nagar, on the earlier complaint there is no iota of evidence to show that the second respondent lodged the complaint immediately after the date of occurrence, namely on 25.11.2021. Further, admittedly, it is a business transaction between the petitioners and the second respondent from 22.05.2015 to 22.07.2021. The petitioners are having running account with the second respondent and time to time they are also paying the amount for the goods supplied by the second respondent. According to the second respondent, finally on 22.07.2021, there is due from the petitioners to the tune of Rs.47,15,828/-. Whereas the stand of the petitioners is that they have no due to the second respondent towards the supply of goods, since they stopped placing orders for the reason that they supplied non-standard quality of goods. While being so, on the complaint lodged by the second respondent, now the first respondent registered the F.I.R for the offences under Sections 406, 420, 294(b), 323 and 506(1) of I.P.C read with Section 4 of Tamil Nadu Prohibition of Harassment of Women Act as against the petitioners.

9. Insofar as the offence under Section 406 of I.P.C is concerned, the essential ingredients, namely, the accused was entrusted property in any manner and the accused committed breach of trust in respect of that property. These ingredients are absent in the F.I.R. Even according to the second respondent, there is no entrustment of any property to the petitioners and no materials are there to disclose that the petitioners had domain over any property at any time. Therefore, no *prima facie* case is made out as against the petitioners for the offence under Section 406 of I.P.C.

10. Insofar as the offence under Section 420 of I.P.C is concerned, the essential ingredients are that (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

11. Admittedly, the petitioners and the second respondent have entered into a business transaction and the petitioners are having



running account with the second respondent. From the date of supplying of goods, there was payments made by the petitioners for the supply of goods. Therefore, there is no manner whatsoever fraudulent or dishonest inducement can be established as against the petitioners. Further, for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. From his making failure to keep promise subsequently, such a culpable intention right at the beginning that is at the time when the promise was made cannot be presumed. As there was absence of fraudulent or dishonest intention, the question of committing the offence under Section 420 of I.P.C does not arise.

12.Insofar as the offence under Section 294(b) is concerned, the words used must involve some lascivious elements arousing sexual thoughts or feelings or the words must have the effect of depraving persons and defiling morals by sex appeal or lustful desires. It is relevant to rely upon the judgment of this Court reported in **1996(1) CTC 470** in the case of **K.Jeyaramanuju Vs. Janakaraj & anr.**, which held as follows :-

"To prove the offence under Section 294 of IPC mere utterance of obscence words are not sufficient but there must be a further proof to establish that it was to the annoyance of others, which is lacking in the case."

On a perusal of the entire F.I.R, there are no such allegations to attract the offence under Section 294(b) of I.P.C.

13.The essential ingredient to attract the offence under Section 323 of I.P.C is that any act with an intention of thereby causing hurt to any person or with the knowledge that he is likely thereby to cause hurt to any person. In the case on hand, there is no averment to attract the offence under Section 323 of I.P.C.

14.In order to attract the offence under Section 506(i) of I.P.C is concerned, the intention of the accused must be to cause alarm to victim. Mere expression of words without any intention to cause alarm would not suffice. Mere vague and bald allegations that the accused threatened the victim with dire consequences is not sufficient to attract the provisions under Section 506 of I.P.C. The threat should be a real one and not just a mere word when the person uttering does not exactly mean that what he says and also when the person against whom the threat is launched, does not feel threatened actually. Further, it should appear that the complainant was feeling fear of his life.

15.In this regard, It is relevant to rely upon the judgment of this Court in **Crl.O.P.(MD)No.11030 of 2014 (Abdul Agis Vs. State through the Inspector of Police)**, which reads as follows:-

<https://hcservices.ecourts.gov.in/hcservices/>



"7.It is seen from the statements recorded under Section 161(3) of Cr.P.C. of the second respondent/defacto complainant that it does not contain any obscene words, which were uttered by the petitioner herein and the entire allegations are very simple in nature. It is also seen from the statement of one Uthami, that the petitioner threatened the defacto complainant with dire consequences when he dashed the defacto complainant. The entire allegations are trivial in nature. Further, to attract the offence under Section 506(i) of I.P.C., there was a threatening only by words. As pointed by the learned counsel appearing for the petitioner, the threat should be a real one and not just a mere word when the petition uttering does not exactly mean what he says and also when the person to whom threat is launched does not feel threatened actually. Therefore, the offences under Sections 294(b) and 506(i) of I.P.C. are not made out as against the petitioner herein and also the entire criminal proceedings is clear an abuse of process of Court. Therefore, this Court is inclined to quash the entire proceedings."

On a reading of the F.I.R, there is no essential ingredients to attract the offence under Section 506(i) of I.P.C.

16.Insofar as the offence under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act is concerned, the occurrence had allegedly taken place in the house of the first petitioner. To attract the said offence, the offence must have been taken place within the precincts of any Educational Institution, Temple or other place of worship, bus stop, road, railway station, cinema thereto, park, beach, place of festival, public service vehicle or vessel or any other place. Therefore, the allegation made in the F.I.R would not attract the offence under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act.

17.Further, as stated supra, there is no explanation for the belated complaint lodged on 08.01.2022 for the alleged occurrence which had taken place on 25.11.2021. It seems that the second respondent lodged the complaint by abusing the process of law and to achieve recovery of amounts arising out of commercial dispute. It is nothing but an attempt to give cloak of a criminal offence in respect of the matters which were purely civil and contractual, ostensibly with an intention to pressurize and harass the petitioners to part with amounts. The prosecution cannot be used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurize the accused. Therefore, the F.I.R cannot be sustained as against the petitioners.



18. Accordingly, this Criminal Original Petition stands allowed and the FIR in Crime No.16 of 2022 on the file of the first respondent is hereby quashed. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Inspector of Police,
Koodal Pudur Police Station,
Madurai.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.RAMSUNDARVIJAYRAJ, Advocate (SR-16418[F] dated 04/04/2022)

+1 CC to M/s.S.MP AMALAN, Advocate (SR-16507[F] dated 05/04/2022)

Cr1.O.P(MD)No.2096 of 2022
04.04.2022

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