



WEB COPY

Crl.O.P.(MD)No.4844 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08/04/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.4844 of 2019

and

Crl.MP(MD)No.6645 of 2021 in

Crl.OP(MD)No.18226 of 2018

and

Crl.MP(MD)Nos.3008 and 3009 of 2019

1.Abubakkar Siddiq

2.Ummul Nazira Banu

: Petitioners/A1 and A2

Vs.

1.The State rep. By

The Inspector of Police,

District Crime Branch,

Ramanathapuram,

Ramanathapuram District.

(Crime No.11 of 2018)

: R1/Complainant

Sahul Hameed (Died)

: R2/De-facto Complainant

2.A.Mumtaj Begum

3.Mohammed Sahib

4.Ahamed Bahim

5.Minor Mathika

6.Minor Faseeka

(Minor Rep.by her mother and
natural guardian Mumtaj Begum)

(R2 to R6 substituted in the place
of Late Sahul Hameed as per the order
of this court, dated 24/02/2022 in
Crl.MP(MD)No.2803 of 2022 in Crl.OP
(MD)No.4844 of 2019)

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records relating to the Charge Sheet in CC No.102 of 2018 on the file of the Judicial Magistrate Court No.II, Ramanathapuram and quash the same as illegal.

For Petitioner

: Mr.Ajmal Khan

for M/s.Ajmal Associates

For 1st Respondent

: Mr.SS.Madhavan

Government Advocate (Crl.side)

For R2 to R6

: Mr.V.Sasikumar

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



2.Crl.MP(MD)No.6645 of 2021:-

Sahul Hameed (Died)
Mumtaj Begam

: Petitioner/Legal Heir of
the Deceased De-facto
Complainant/LW1 in CC
No.102 of 2018 on the file
of the Judicial Magistrate,
Ramanathapuram.

Vs.

1.State rep. By
The Inspector of Police,
District Crime Branch,
Ramanathapuram Police Station. : R1/Complainant

2.Abubakkar Siddiq
3.Ummul Naseera Banu : R2 and R3/A1 and A2

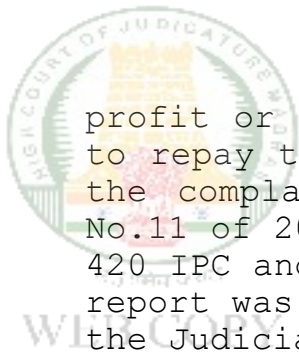
Prayer: Criminal Miscellaneous Petition filed under section 439 (2) of the Criminal Procedure Code, to cancel the Anticipatory bail granted to the A1 and A2 in Crl.OP(MD)No.18226 of 2018, dated 11/10/2018 by this court in Crime No.11 of 2018 on the file of the Ramanathapuram, DCB Police Station.

COMMON ORDER

Crl.OP(MD)No.4844 of 2019 is filed seeking quashment of the case in CC No.102 of 2018 on the file of the Judicial Magistrate Court No.II, Ramanathapuram, whereas Crl.MP(MD)No.6645 of 2021 has been filed to cancel the bail granted to the respondents 2 and 3/A1 and A2 in Crl.OP(MD)No.18226 of 2018, dated 11/10/2018.

2.The case of the prosecution in brief:-

The de-facto complainant is working as Senior Officer in UAE Bank, Sharja. During the year 2006, the first accused along with his wife namely A2 herein approached the de-facto complainant stating that he is doing real estate business and earning good profit and thereby introduced the de-facto complainant to invest the money, so that he can also get sufficient profit. Believing the words of the accused, the de-facto complainant paid a sum of Rs.35,00,000/-, on 14/08/2006. They also executed a joint real estate business agreement. The second instalment of Rs.25,00,000/- was also paid, on 21/01/2008. The 3rd instalment of Rs.45,40,000/- was also paid, on 12/09/2008. On 19/09/2010, a consolidated receipt was also executed. When the property was demanded, the accused told that that there is slow down in the business and so, a power of attorney in respect of survey No.370/5 measuring about 1.28 acres was executed. When the



profit or the invested amount was demanded back, the accused failed to repay the same and misappropriated the entire amount. Based upon the complaint given by the de-facto complainant, a case in Crime No.11 of 2018 was registered for the offences under sections 406 and 420 IPC and after completing the formalities of investigation, final report was filed and it was taken cognizance in CC No.102 of 2018 by the Judicial Magistrate No.II, Ramanathapuram.

3. Seeking quashment of the same, this petition has been filed by the petitioners.

4. Heard both sides.

5. When this matter was heard, it has been brought to the notice of this court that Crl.MP(MD)No.6645 of 2021 was heard by me and reserved for orders. That petition was filed to cancel the anticipatory bail that was granted to the accused in Crl.OP(MD)No.18226 of 2018, dated 11/10/2018. So the Registry was directed to tag the matter along with MP and both were heard at length.

6. During the course of argument, the learned counsel appearing for the de-facto complainant in Crl.MP(MD)No.6645 of 2021 has elaborately submitted that taking advantage of the anticipatory bail, the petitioners continuously indulged in threatening the de-facto complainant to withdraw the complaint. Only on that ground, the above said Miscellaneous Petition was filed.

7. It has been brought to the notice of this court that during the course of pendency of the above said miscellaneous petition, the de-facto complainant died and in her place, her legal representatives have been impleaded as respondents 2 to 6 in Crl.OP(MD)No.4844 of 2019. So, it appears that as on date, the de-facto complainant namely Sahul Hameed is no more. So the threat alleged to have been made by the petitioners to the de-facto complainant, now has also died I.e., the cause of action has died, to cancel the anticipatory bail.

8. However, the learned Senior counsel appearing for the accused would submit that since there was a direction by this court to make a compromise, the accused happened to visit the house of the de-facto complainant and except for that purpose, they have not visited the house, either to threaten the de-facto complainant or to make nuisance. But however, the learned counsel appearing for the de-facto complainant would submit that the trial process was in half way and PW1 was examined in chief. Without cross examining the witnesses, the petitioners visited the house of the de-facto complainant and making a threat. It is true that the matter was referred to mediation once and because of the non-cooperation of the parties for amicable settlement, it could not succeed. So, the matter was referred back to the court. So even the sequence of events shows that absolutely, there is no criminal intention on the part of the petitioners for visiting the house of the de-facto complainant. Now there is no complaint from the legal heirs of the de-facto complainant regarding the conduct of the petitioners. So as



mentioned earlier, now the cause of action for cancelling the bail has also died. So, the criminal miscellaneous petition in Crl.MP(MD) No.6645 of 2021 in Crl.OP(MD)No.18226 of 2018 deserves to be dismissed and accordingly, it is **dismissed**.

9.Now coming to Crl.OP(MD)No.4844 of 2019, as mentioned earlier, it is the specific case of the de-facto complainant to the effect that A1 induced him to part away a total sum of Rs.1,01,62,380/- with an assurance to give profit. In what way, the 2nd accused is indulged in the affairs that took place between the first accused and the de-facto complainant is not clearly stated in the final report. In the final report, there is a bald allegation to the effect that A2 is also colluding with A1 in misappropriation and cheating. That means, according to the prosecution, A2 also shared the common intention along with A1. But absolutely, no material is available on record to show the same. Simply because, the second petitioner happened to be the wife of A1, she cannot be made criminal liable for the action of the first petitioner. Except stating that A2 is also colluding with A1, no other materials have been collected during the course of investigation to show the involvement of the A2 in the affairs.

10.The learned Senior counsel appearing for the petitioners has fairly submitted that the first petitioner/A1 may be directed to face the prosecution, but the 2nd petitioner/A2 may be considered in view of the fact that her involvement has not been brought on record during the course of investigation by collecting materials.

11.I find that the argument of the learned Senior counsel appearing for the 2nd petitioner appears to be fair and reasonable one, which is also submitted by materials on record. In respect of the first accused is concerned, materials have been collected by the Investigating Officer to show that there was a business transaction between A1 and the de-facto complainant. So, whether there was any cheating and misappropriation of money is a matter for trial. So, the petition filed by the A1 is liable to be dismissed. In respect of A2, this petition is liable to be allowed and accordingly, it is allowed in respect of A2.

12.In the result, Crl.OP(MD)No.4844 of 2019 is **allowed** in respect of the second petitioner/A2 and the impugned CC No.102 of 2018 on the file of the Judicial Magistrate No.II, Ramanathapuram is quashed as against the second petitioner/A2. In respect of the first petitioner/A1, Crl.OP(MD)No.4844 of 2019 is **dismissed**. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/06/2022

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 Judicial Magistrate No.II,
Ramanathapuram.
- 2.The Inspector of Police,
District Crime Branch,
Ramanathapuram,
Ramanathapuram District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.V. SASIKUMAR, Advocate (SR-17472[F] dated 08/04/2022)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-17689[F] dated 11/04/2022)

Crl.O.P.(MD)No.4844 of 2019
and
Crl.MP(MD)No.6645 of 2021 in
Crl.OP(MD)No.18226 of 2018
and
Crl.MP(MD)Nos.3008 and 3009 of 2019
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