



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06/04/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P.(MD)No.13703 of 2019

and

Crl.MP(MD)No.8350 of 2019

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Selvaraj : Petitioner/A3
Vs.

1.The Inspector of Police,
Karaikudi North Police Station,
Karaikudi, Sivagangai District,
in Crime No.154 of 2018 : R1/Complainant

2.Masan : R2/De-facto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records relating to CC No.422 of 2018 on the file of the Principal District Munsif-cum-Judicial Magistrate Court, Karaikudi, Sivagangai District.

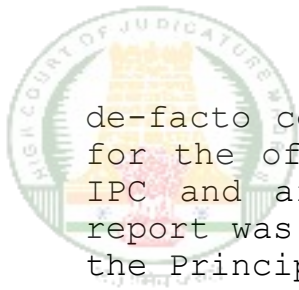
For Petitioner : Mr.V.Karuna
For 1st Respondent : Mr.P.Kottai Chamy
Government Advocate (Crl.side)
For 2nd Respondent : Mr.D.Venkatesh

ORDER

This criminal original petition is filed seeking quashment of CC No.422 of 2018 on the file of the Principal District Munsif-cum-Judicial Magistrate, Karaikudi, Sivagangai District.

2.The case of the prosecution in brief:-

The de-facto complainant approached the first accused for financial assistance. He requested him to pay Rs.50,000/-. At that time, A1 executed the power of attorney in his favour in respect of the property, which belonged to him. He also promised that he will cancel the power of attorney, on repayment of the loan amount. So believing the words of the first respondent, he executed a power of attorney, on 26/05/2017 and at that time, the second accused was also available in that place. Only the second respondent paid the money. In the month of April 2017, the de-facto complainant repaid the loan amount and requested A1 to cancel the power of attorney. At that time, A1 told that the property was already sold to A2. He has also promised that he will get the property returned. For that also, he executed a letter, dated 08/07/2017. In spite of repeated demand, the property was not returned. When that was enquired, on 22/04/2018 at about 6.00 a.m, he was abused in filthy language and also criminally intimidated. Based upon the complaint given by the



de-facto complainant, a case in Crime No.154 of 2018 was registered for the offences under sections 120-B, 294(b), 406, 420 and 506(i) IPC and after completing the formalities of investigation, final report was filed and it was taken cognizance in CC No.422 of 2018 by the Principal District Munsif-cum-Judicial Magistrate, Karaikudi.

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

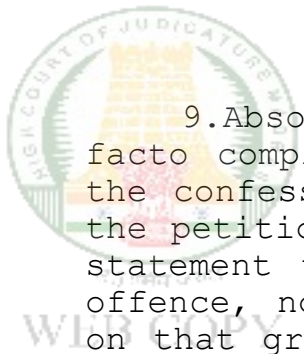
4. Heard both sides.

5. From the preamble portion, it is seen that there was a money transaction as well as the land transaction between the de-facto complainant and the first respondent. The de-facto complainant alleged to have executed a power of attorney in respect of the property situated in Survey Nos.272/1B and 272/1A as a security for the loan that was obtained by him. Actually, the loan amount was given by the second accused, but the document was executed in the name of the first accused. After the payment of the above loan amount, it appears that trouble has arisen between the parties as stated above. Whether there was any money transaction, upon which only the power of attorney was executed as security for the loan obtained, cannot be a matter for consideration or discussion in this petition, since, neither A1 nor A2 are before this court.

6. But however, it is seen that in the final report, no specific allegation has been made against this petitioner. It has been stated in the final report that an enquiry was made with regard to return of the property to the de-facto complainant. A1 and A2 joined together, abused in filthy language and also criminally intimidated. Nowhere in the final report, the involvement of this petitioner is mentioned. The entire allegations are only against A1 and A2.

7. The learned counsel appearing for the 2nd respondent at the time of argument would submit that whether in the facts and circumstances of this case, the offence under section 34 IPC is attracted against this petitioner is a matter for consideration, at the time of framing of charges by the trial court. According to him, in the facts and circumstances of the case, it is not the fittest case to quash the proceedings against this petitioner.

8. During the course of investigation, it appears that this petitioner was found involved in the above said money lending transaction and only at his instigation, the above said offence said to have been taken place. It is also seen that this petitioner retired from the police department. But except bald allegation that this petitioner is also involved in the above said occurrence, no other material has been collected during the course of investigation.



9.Absolutely, there is an improvement on the side of the de-facto complainant against his earlier statement. On the basis of the confession statement of A1, it appears that the involvement of the petitioner came to note. But as mentioned earlier, except bald statement that this petitioner is also involved in the above said offence, no material has been collected or seized or recovered. So on that ground, the criminal proceedings against the petitioner is liable to be quashed.

10.In the result, this criminal original petition is **allowed**. The impugned CC No.422 of 2018 on the file of the Principal District Munsif-cum-Judicial Magistrate, Karaikudi, Sivagangai District is hereby quashed as against the petitioner. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (P&A)

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/ /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 Principal District-cum-Judicial Magistrate,
Karaikudi, Sivagangai District.
- 2.The Inspector of Police,
Karaikudi North Police Station,
Karaikudi,
Sivagangai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD) Nos.13703 of 2019
06/04/2022

SB(CO)
KB(26.04.2022) 3P 4C