



Crl.O.P.(MD) No.19164 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.11.2022

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THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD) Nos.19164 and 19649 of 2018
CrI.M.P.Nos.8601, 8602, 8969 and 8970 of 2018

1.Helen Rose

2.Micheal Lawrence @ Micheal Lawrence ... Petitioners/
A1 & A2 in Crl.O.P.No.19164

1.Roch Antony Saji

2.Sahaya Sunmitha ... Petitioners/
A3 & A4 in Crl.O.P.No.19649

-VS-

State rep. by

1.The Inspector of Police,
District Crime Branch
Theni
Crime No.16 of 2018

... Respondent/
Complainant in both
Crl.O.Ps.

2.Sahaya Sheela

... Respondents /
De-facto complainant
in both Crl.O.Ps.



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Common Prayer: Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure to call for the records in C.C.No.205 of 2018 pending on the file of the learned Judicial Magistrate, Theni and quash the same in respect of the petitioners.

For Petitioner : Mr.P.Arun Jeyatram

For Respondents : Mr.M.Senthilkumar
Government Advocate (Crl. side)

COMMON ORDER

These criminal original petitions have been filed challenging the proceedings pending before the Judicial Magistrate, Theni in C.C.No. 205 of 2018.

2.A1 is the sister of the de-facto complainant; A2 is the husband of A1. A3 and A4 are the children of A1 and A2. The second respondent gave a complaint to the first respondent police to the effect that she was residing with her husband at Dubai and she also had a son. The de-facto complainant has alleged that she has lent a sum of Rs.19 lakhs to the accused persons to meet various expenses including the educational expenses of A3 and A4. It is further alleged that on 30.11.2011, during the marriage of the sister of A2, she had also given gold jewelry worth a sum of Rs.2,85,000/-. The grievance of the second



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respondent is that neither the amount that was lent by her nor the gold jewelry were returned back. The husband of the de-facto complainant also died on 08.06.2013. Even though the de-facto complainant was repeatedly asking for repayment of the amount and for the gold jewelry, the same was not given back. Hence, the complaint was given and based on the same, an FIR came to be registered in Crime No.16/2018.

3. The investigation was taken up and a final report came to be filed before the Court below for offences under Sections 120(B), 406 and 420 IPC against A1 to A4. Aggrieved by the same, the present quash petitions have been filed before this Court.

4. Heard the learned counsel for the petitioners and the learned Government Advocate (Crl. Side) appearing on behalf of the State.

5.A3 and A4 had approached this Court even when the FIR was registered by the respondent police in Crime No.16/2018 and this Court took into consideration the fact that it was a money dispute between the parties and the earlier complaint that was given by the de-facto complainant was investigated and closed and hence, finding prima



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facie case, the investigation was stayed by an order dated 17.09.2019. It is quite unfortunate that when the order of stay was in force, the respondent police disregarded the same and proceeded to complete the investigation in a hasty manner and filed final report before the Court below. This Court was inclined to quash the final report on this ground alone, since the final report was filed in total disobedience to the interim order passed by this Court. However, this Court deemed it appropriate to go into the allegations made in the final report along with the materials filed along with the final report and see if any offence has been made out against the petitioners.

6. The sum and substance of the allegations made by the de-facto complainant is that she had lent moneys during various occasions to A1 and A2 and this amount was not repaid back by them. The other allegation is that she gave gold jewelry to A1 during the marriage of the sister of A2 and the gold jewelry was not returned back. These amounts are said to have been given during the period from 2001 to 2011 and the gold jewelry was given during the year 2011.

7. It is seen from records that the de-facto complainant had



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initially issued a legal notice on 06.03.2017 to A2 calling upon A2 to repay a sum of Rs.16,44,000/-. A reply was given to this notice by A2 to the effect that no such loan was given by the de-facto complainant. A complaint was given in this regard before the District Crime Branch, Theni, and on investigation, the complaint was closed on 20.11.2017. It is after this closure of the earlier complaint, a fresh complaint came to be given before the same police on 03.05.2018 and the same was entertained. The additional fact that was added to the complaint is with regard to the jewelry that is said to have been given by the de-facto complainant to A1 and A2.

8. In the first place, there was a substantial delay of 7 years in lodging the complaint and there was absolutely no explanation as to why it took such a long time for the de-facto complainant to approach the police. Surprisingly, when the complaint was given with such an enormous delay, on 03.05.2018, it was taken on file and an FIR was registered on the same day by the very same respondent police, who had closed the earlier complaint. In ***Lalita Kumari v. State of Uttarpradesh and others*** reported in (2008) 7 SCC 164, the Apex Court, while giving guidelines, has held that wherever there is an inordinate delay in giving



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the complaint, preliminary enquiry has to be made before an FIR is registered. In the present case, a preliminary enquiry ought to have been undertaken not only on the ground of inordinate delay in lodging the complaint, but also taking into consideration the closure of the earlier complaint given before the very same police.

9. Insofar as the first allegation is concerned, it relates to the loan amount paid by the de-facto complainant and the same not being repaid back. This allegation will not constitute an offence of cheating and at the best, the de-facto complainant ought to have filed a suit for recovery of money against A1 and A2. Criminal proceedings will not come to the aid of the de-facto complainant for recovery of money against the accused persons.

10. The other allegation is with regard to handing over jewelry for the marriage of the sister of A2, which was not returned back. The learned counsel for the de-facto complainant submitted that there was entrustment of property and it has been misappropriated. In the present case, A1 is none other than the sister of the de-facto complainant and A2 is the brother-in-law. If really the jewelries were handed over in the year



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2011 and it was not returned back, nothing prevented the de-facto complainant to initiate proceedings immediately and it should not take seven long years to even lodge a complaint. That apart, except for the *ipse dixit* of the de-facto complainant, there is no other material to show that the jewelries were in fact handed over to A1 and A2 and they misappropriated the same.

11. In the considered view of this Court, a civil dispute as between the de-facto complainant and A1 and A2 has been given a criminal colour and for some reason, in spite of an order of interim stay granted by this Court, the respondent police proceeded to file a final report. It is even more unfortunate that A3 and A4, who have nothing to do with the alleged transactions, have been made as accused persons just because they are the sons of A1 and A2. No offences have been made out against the accused persons and the continuation of the criminal proceedings against the petitioners will clearly amount to abuse of process of Court, which requires the interference of this Court under Section 482 Cr.P.C.



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12. In the result, the proceedings in C.C.No.205 of 2018 on the file of the Judicial Magistrate, Theni is hereby quashed and both the criminal original petition stand allowed. Consequently connected Miscellaneous Petitions are closed.

03.11.2022

Internet : Yes
RR

To

1.The Judicial Magistrate
Theni.

2.The Inspector of Police,
District Crime Branch
Theni



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N.ANAND VENKATESH, J.

RR

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