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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 04.02.2022

PRONOUNCED ON: 25.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P (MD) No.19498 of 2021

and

Crl.M.P. (MD) Nos.10894 & 10896 of 2021

1.Paramasiva Pandian

2.Manthiramoorthi

3.Sanmugaiah Thevar

4.Subramanian ... Petitioners / Accused Nos.1 to 4

Vs

1.The State represented by
Sub Inspector of Police,
Naraikinaru Police Station,
Thoothukudi District.

(Crime No.29/2017) ... 1st Respondent / Complainant

2.Manoharan ... 2nd Respondent / Defacto Complainant

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to call for the records pertaining to the charge sheet in C.C.No.91 of 2021 on the file of the learned Judicial Magistrate No.II, Kovilpatti, Thoothukudi and quash the same.

For Petitioners : Mr.A.Robinson
For R1 : Mr.M.Sakthikumar
Government Advocate (crl.side)

For R2 : Mr.M.Veilkani Raju

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.91 of 2021 on the file of the Judicial Magistrate No.II, Kovilpatti, Thoothukudi District.

2. Based on the information lodged by the second respondent, the first respondent registered Crime No.29 of 2017 for the offences under Sections 341, 294(b) and 506(i) of IPC on 17.10.2017. After investigation, a positive final report was filed and the trial court took cognizance of the offences. The question that calls for



consideration is whether the impugned proceedings deserve to be quashed.

3. The learned Government Advocate (crl.side) appearing for the first respondent and the learned counsel appearing for the second respondent submitted that no case for quashing has been made out as factual aspects are involved. It is seen that the first petitioner herein had lodged a complaint before the Superintendent of Police on 19.09.2017 alleging that one Iyadurai and the second respondent herein and four others have cheated him to the tune of Rs.15,00,000/-. The said complaint was registered as Crime No.28 of 2017 for the offences under Sections 147, 419, 420, 294(b) & 506(i) of IPC. The first petitioner as well as the second respondent herein submitted petitions before the Superintendent of Police, Thoothukudi on 19.09.2017. Both the cases were registered on the same day ie. 17.10.2017. But that will not make them as case and counter case. I am not concerned with the merits of the first petitioner's complaint against the second respondent and others. Suffice it to say that an allegation of cheating has been made by the first petitioner. The specific allegation of the petitioners is that since such a cheating complaint was given by the first petitioner, the second respondent felt angered and launched the present prosecution as a counter blast.

4. I went through the contents of the impugned FIR. The second respondent has referred to the complaint made by the first petitioner herein in the impugned FIR. He would allege that when he was returning home after police enquiry on 17.09.2017, the petitioners waylaid him and threatened him. It is not the case of the defacto complainant that he suffered any injury or that the petitioners used any force. According to the first petitioner, he has been cheated to the tune of Rs.15,00,000/-. Therefore, a demand for return of the amount cannot be objected to. A victim of cheating is bound to confront the person from whom money is due. This will not amount to an offence. Even going by the case of the prosecution, no offence is made out. Since the complaint of the second respondent itself discloses the earlier complaint given by the first petitioner herein, I come to the conclusion that the impugned prosecution was initiated as counter blast and to wreck vengeance with the petitioners herein.

5. The Hon'ble Supreme Court, in the decision reported in **(1992 Supp(1) SCC 335) State of Haryana V. Bhajanlal**, has laid down set of parameters for quashing the proceedings. One of the parameter for quashing is where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. The case on hand attracts the said parameter.



6. Therefore, the impugned proceedings stand quashed. This Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (W)

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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 Judicial Magistrate No.II, Kovilpatti, Thoothukudi.

2.The Sub Inspector of Police,
Naraikinaru Police Station,
Thoothukudi District.

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

+1 CC to M/s.A.ROBINSON, Advocate (SR-20930[F] dated 25/04/2022)

Crl.O.P (MD)No.19498 of 2021

and

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RD(19.05.2022) 3P 5C