BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 14.12.2021
PRONOUNCED ON: 28.01.2022
CORAM
THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

Crl.O.P.(MD)No.19863 of 2018
and
Crl.M.P.(MD)Nos.9102 and 9103 of 2018

1.Venkatasamy
2.Muthu Krishnan : Petitioners/Accused 1 and 2

Vs.

1.State represented by
The Inspector of Police,
D-1, Thallakulam Police Station,
Madurai. : Respondent/Complainant

2.D.Eshwaran : Respondent / Defacto Complainant

PRAYER : Criminal Original Petition has been filed under Section 482 Cr.P.C, to call for the records in connection with C.C.No.361 of 2015, on the file of the Judicial Magistrate No.II, Madurai and quash the same.

For Petitioners : Mr.S.Poornachandran
For Respondents : Mr.R.Sivakumar
Government Advocate(Crl.Side)
for R.1
: Mr.Niranjan S.Kumar
for R.2

ORDER

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records in C.C.No.361 of 2015, pending on the file of the Court of Judicial Magistrate No.II, Madurai and quash the same.

2. The petitioners are the accused Nos.1 and 2 in C.C.No.361 of 2015, on the file of the Court of Judicial Magistrate No.II, Madurai. On the basis of the complaint lodged by the second respondent, F.I.R., came to be registered in Cr.No.324 of 2015, against 3 named persons and 3 other persons for the offences under Sections 147, 467, 506(i) I.P.C., and under Sections 3 and 4 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003. The first respondent, after completing the investigation, has laid the final report under Section 173 Cr.P.C., against the petitioners herein for the offences under Sections 467 and 506(i) I.P.C., and Sections 3 and 4 of the Tamil Nadu Prohibition of Charging

Exorbitant Interest Act, 2003 and the case was taken on file in C.C.No.361 of 2015 and the same is pending on the file of the Court of Judicial Magistrate No.II, Madurai.

3. Admittedly the petitioners/accused are brothers and are Advocates by profession. The second respondent/defacto complainant is the husband of the witness Karpagam. It is not in dispute that the second petitioner has filed a private complaint under Section 200 Cr.P.C., against the wife of the defacto complainant for the offence under Section 138 r/w 142 of the Negotiable Instruments Act in S.T.C.NO.515 of 2014 and that the same is pending on the file of the Court of Judicial Magistrate, Fast Track Court No.I, Madurai.

4. The case of the prosecution is that the second respondent and her wife have been running a hotel, that they have borrowed a sum of Rs.5,00,000/- from the petitioners to expand their business in the year 2012, that the accused have taken three blank and signed cheques, two blank 20Rs., stamp papers with signatures, two blank concur sheets with signatures and two blank promissory notes with signatures, that the second respondent had already paid Rs.18,30,000/- towards interest, that since the second respondent has not paid interest for two months, they have filled up one of the cheques issued by the wife of the defacto complainant and filed a cheque dishonour case, that the accused have demanded the second respondent to pay Rs.10,00,000/-, or else to execute a document giving their hotel to the accused and that on 21.01.2016 at about 06.00p.m., both the accused came to the hotel and threatened the defacto complainant to return the amount within one month or else they will kill the defacto complainant and his family members.

5. The learned Counsel for the petitioners would submit that the petitioners are practicing advocates and they are having their permanent office nearby the first respondent police and that therefore, the very filing of absconding charge sheet against the petitioners is *ex facie* illegal. The learned Counsel would further submit that the petitioners have no knowledge about the case prior to the receipt of summons, that the first respondent has failed to take note that the cheque dishonour case in S.T.C.No.515 of 2014 is pending against the wife of the defacto complainant before the Fast Track Court, Judicial Magistrate Court, Madurai and in order to escape from the clutches of law in the pending complaint under Section 138 of the Negotiable Instruments Act, the second respondent has filed the above false case with *malafide* intention, that the father's name and address of the petitioners were wrongly given and the same were purposely given for evading the service to the petitioners and that all the allegations levelled against the petitioners are false, concocted and imaginary.

6. As already pointed out, the main contention of the petitioners is that the complaint was lodged by the defacto

complainant only to escape from the case pending in S.T.C.No.515 of 2014 against his wife under Section 138 of the Negotiable Instruments Act. In the complaint in S.T.C.No.515 of 2014, the second petitioner has alleged that the wife of the defacto complainant asked the second petitioner to give Rs.10,00,000/- as hand loan to clear her family sundry debts, that though he was not having such huge amount with him, as he was duly convinced with the urgent needs of the wife of the defacto complainant, he arranged the said amount from his brother and other relatives, that on 10.07.2014, she came along with the defacto complainant to the petitioners' office and received the said amount of Rs.10,00,000/-, that the defacto complainant's wife had promised to settle the said amount by end of July 2014 and also gave a cheque leaf after filling up and subscribing her signature and that when the cheque was presented for collection, the same was returned for want of sufficient funds in the bank account of the accused.

7. In the present case, as already pointed out, it is the specific case of the second respondent that they had borrowed a sum of Rs.5,00,000/- only from the petitioners in the year 2012 and they have already paid Rs.18,30,000/- towards interest. It is their further case that since the defacto complainant has not paid interest for two months, the second petitioner has lodged a complaint under Section 138 of the Negotiable Instruments Act against the wife of the defacto complainant by filling up the blank cheque for Rs.10,00,000/- and that thereafter the petitioners had been threatening the defacto complainant to pay Rs.10,00,000/- or else to hand over their hotel to the petitioners.

8. As rightly contended by the learned Counsel for the second respondent, the second respondent in the complaint has specifically alleged the above aspects and further narrated the two incidents allegedly occurred on 20.01.2015 and on 21.01.2015. It is pertinent to mention that the first respondent, after examining the witnesses and completing the investigation, has laid the final report against the petitioners for the offences under Sections 467 and 506(i) I.P.C., and also under the provisions of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act (TNPCEI Act). It is also not in dispute that the learned Judicial Magistrate, being satisfied with the existence of a *prima facie* case, has taken cognizance of the case in C.C.No.361 of 2015 for the offences under Sections 467, 506 (i) I.P.C., and Section 3 and 4 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003. As rightly contended by the learned Counsel for the second respondent, not only the defacto complainant and her wife Karpagam, the two other eye-witnesses have also given their statements reiterating the version of the defacto complainant.

9. The learned Counsel for the petitioners has relied on a decision of this Court in ***M.Sudha Vs. the State represented by the***

Inspector of Police, J-4, Kottupuram Police Station, Chennai, in ***Crl.O.P.No.648 of 2019***, dated 05.03.2019, wherein the learned Single Judge has quashed the F.I.R., registered for the offences under Section 3 r/w 4 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 and Section 420 I.P.C. In the said case also, a complaint was lodged under Section 138 of the Negotiable Instruments Act against the defacto complainant and the same was pending at that time. The learned Single Judge of this Court, by observing that since the petitioners have established that their main business was not money lending, the case registered for the offences under Sections 3 and 4 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act is *prima facie* not made out and that the defacto complainant to escape from the clutches of the proceedings for the offence punishable under Section 138 of the Negotiable Instruments Act has laid the present complaint, has held that the entire complaint has been vitiated and it is clear abuse in process of law and quashed the F.I.R.

10. But in the case on hand, as already pointed out, the first respondent, after gathering evidence and after satisfying that there existed a case to be prosecuted against the accused, has laid the final report.

11. At this juncture, it is necessary to refer the decisions of the Honourable Supreme Court relied upon by the learned Counsel for the second respondent.

(i) ***Rajeev Kourav Vs Baisahab and Others*** reported in ***(2020)3 SCC 317***. When the order of the High Court quashing the final report filed for the offence under Section 306 I.P.C. was challenged, the Hon'ble Apex Court has held as follows:

> "7. *Mr.Shoeb Alam, learned counsel appearing for Respondent Nos.1 to 3 relied upon several judgments of this Court to submit that allegations only disclose a case of harassment meted out to the deceased. The ingredients of Section 306 and 107 IPC have not been made out. It is submitted that there is nothing on record to show that the Respondents have abetted the commission of suicide by the deceased. He further argued that abetment as defined under Section 107 IPC is instigation which is missing in the complaint made by the Appellant. He further argued that if the allegations against Respondent Nos.1 to 3 are not prima facie made out, there is no reason why they should face a criminal trial.*
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> *8. We do not agree with the submissions made on behalf of Respondent Nos.1 to 3. The conclusion of the High Court to quash the criminal proceedings is on the basis of its assessment of the statements recorded under Section 161 CrPC. Statements of witnesses recorded under Section*

161 CrPC being wholly inadmissible in evidence cannot be taken into consideration by the Court, while adjudicating a petition filed under Section 482 CrPC"

9. Moreover, the High Court was aware that one of the witnesses mentioned that the deceased informed him about the harassment meted out by Respondent Nos.1 to 3 which she was not able to bear and hence wanted to commit suicide. The High Court committed an error in quashing criminal proceedings by assessing the statements under Section 161 Cr. P.C.

(ii) ***Kaptan Singh Vs. The State of Uttasr Pradesh and Others*** reported in ***2021(3) Crl.SC 247.***

In this case also, when the order of the High Court quashing the entire proceedings for the offences under Sections 147, 148, 149, 406, 329 and 386 I.P.C., was challenged, the Hon'ble Supreme Court has held thus:

"9.1 At the outset, it is required to be noted that in the present case the High Court in exercise of powers under Section 482 Cr.P.C. has quashed the criminal proceedings for the offences under Sections 147, 148, 149, 406, 329 and 386 of IPC. It is required to be noted that when the High Court in exercise of powers under Section 482 Cr.P.C. quashed the criminal proceedings, by the time the Investigating Officer after recording the statement of the witnesses, statement of the complainant and collecting the evidence from the incident place and after taking statement of the independent witnesses and even statement of the accused persons, has filed the charge-sheet before the Learned Magistrate for the offences under Sections 147, 148, 149, 406, 329 and 386 of IPC and even the learned Magistrate also took the cognizance. From the impugned judgment and order passed by the High Court, it does not appear that the High Court took into consideration the material collected during the investigation/inquiry and even the statements recorded. If the petition under Section 482 Cr.P.C. was at the stage of FIR in that case the allegations in the FIR/Complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered. However, thereafter when the statements are recorded, evidence is collected and the charge-sheet is filed after conclusion of the investigation/inquiry the matter stands on different footing and the Court is required to consider the material/evidence collected during the investigation. Even at this stage also, as observed and held by this Court in catena of decisions,

the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial. As held by this Court in the case of Dineshbhai Chandubhai Patel (Supra) in order to examine as to whether factual contents of FIR disclose any cognizable offence or not, the High Court cannot act like the Investigating agency nor can exercise the powers like an Appellate Court. It is further observed and held that question is required to be examined keeping in view, the contents of FIR and prima facie material, if any, requiring no proof. At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on. It is further observed it is more so, when the material relied on is disputed. It is further observed that in such a situation, it becomes the job of the Investigating Authority at such stage to probe and then of the Court to examine questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.

9.2 In the case of Dhruvaram Murlidhar Sonar (Supra) after considering the decisions of this Court in Bhajan Lal (Supra), it is held by this Court that exercise of powers under Section 482 Cr.P.C. to quash the proceedings is an exception and not a rule. It is further observed that inherent jurisdiction under Section 482 Cr.P.C. though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in section itself. It is further observed that appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 Cr.P.C. Similar view has been expressed by this Court in the case of Arvind Khanna (Supra), Managipet (Supra) and in the case of XYZ (Supra), referred to hereinabove.

9.3 Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that the High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 Cr.P.C."

12. The Hon'ble Supreme Court has settled the position of law that the exercise of power under Section 482 Cr.P.C., to quash the proceedings is an exception and not a rule and that though the power under Section 482 is wide, the same has to be exercised sparingly, carefully and with caution. While exercising the jurisdiction under

Section 482 Cr.P.C., quashing the F.I.R., is entirely different from quashing of final report. When a final report is challenged, then the Court is duty bound to consider the statements of the witnesses recorded and other materials collected and produced in the charge sheet, but at the same time, the Court is not required to go into the merits of the case.

13. In the case on hand, on considering the charge sheet and statements recorded, as rightly contended by the learned Counsel for the second respondent, *prima facie* materials are available to proceed against the petitioners and there is nothing to infer that the ingredients for the provisions of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act and also for the offences under Sections 467 and 506(i) I.P.C., are not made out.

14. Considering the above, this Court is of the clear view that since the prosecution has made out *prima facie* case, the question of quashing the proceedings does not arise at all. Hence, this Court concludes that the above petition is devoid of merits and the same is liable to be dismissed. It is clarified that this Court has not expressed any opinion on the merits of the case and the petitioners are at liberty to take all the pleas and defence now raised before this Court during the trial.

15. In the result, the Criminal Original Petition is dismissed. Consequently, the connected Miscellaneous Petitions are also dismissed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

SSL

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, Madurai.

2. The Inspector of Police,
D-1, Thallakulam Police Station,
Madurai.

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

Crl.O.P.(MD)No.19863 of 2018
28.01.2022

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