

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on : 27.01.2022

Delivered on : 04.02.2022

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CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR**Crl.O.P.(MD)No.16843 of 2019****and****Crl.M.P.(MD)No.10008 of 2019**

1.M.Thirumurthy

2.Ramesh Rajan

... Petitioners/ Accused Nos.2 & 3

vs.

1.The State represented by
The Inspector of Police,
Thallakulam Police Station,
Madurai City.

(Crime No.1540 of 2019)

... 1st Respondent/ Complainant

2. (*)Mohanavel

... 2nd Respondent/ Defacto Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C,
to call for the records relating to the FIR in Crime No.1540 of 2019
on the file of the first respondent and quash the same as illegal in
so far as the petitioners are concerned.

For Petitioners : Mr.Sathish Parasaran, Senior Counsel
for Mr.R.Gandhi

For Respondents : Mr.R.Sivakumar
Government Advocate (Crl. side) for R1
No appearance for R2

O R D E R

This Criminal Original Petition has been filed, invoking
Section 482 Cr.P.C., seeking orders to call for the records relating
to the FIR in Crime No.1540 of 2019 pending on the file of the first
respondent and quash the same so far as the petitioners are
concerned.

2.The petitioners are the accused Nos.2 and 3 in Crime No.1540
of 2019 on the file of the Thallakulam Police Station, Madurai City.



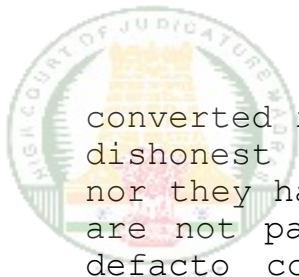
3. On the basis of the complaint lodged by the respondent, FIR came to be registered in Crime No.1540 of 2019 against three persons including the petitioners herein for the alleged offences under Sections 406 and 420 IPC.

4. According to the petitioners, they are the Trustee and Managing Trustee of Tamizhavel Thiru P.T.Rajan Commemoration Trust which is a charitable trust involved in Public Welfare Activities and the Trust is running a PTR marriage hall.

5. The case of the prosecution is that the second respondent approached the first accused on 22.07.2019 for booking the PTR marriage hall for his marriage scheduled to take place on 08.09.2019, that the first accused has received a sum of Rs.2,50,000/- in cash towards the rent for the marriage hall and gave a hand written receipt, that subsequently, the second accused has contacted the second respondent over phone and informed that the first accused had collected rent from several persons on the guise of booking marriage hall and misappropriated the same and further informed him to remit the rent amount to the Trust or otherwise he will not be allowed to use the marriage hall, that the second respondent with no other option has paid the rent amount vide cheque and thereafter, he has paid a sum of Rs.1,18,000/- for using other facilities, that though the accused Nos.2 and 3 have admitted the misappropriation of the rents by their manager, they have again collected the rent from the second respondent and that therefore, he was constrained to lodge the above complaint.

6. The main contention of the petitioners is that the second respondent has not paid the rent to the first accused in the Trust office and admittedly, he had handed over the cash of Rs.2,50,000/- to the first accused near Periyar bus stand, that the hand written receipt allegedly given by the first accused does not disclose any details regarding the payment of money, date, time and other particulars, that the petitioners, being the office bearers of the Trust, came to know that the first accused had cheated few persons by misusing the Trust name, that the first petitioner had already lodged a complaint before the first respondent police and on that basis, case in Crime No.1194 of 2019 was registered against the first accused and the same is pending for investigation, that there is no question of any misappropriation of funds given to the petitioners, when the cheque was presented in the Trust account and that the second respondent at the instance of the first accused has lodged the above false complaint with an intention to extract money from the petitioners.

7. The learned Senior counsel for the petitioners would submit that the FIR does not disclose any offence for the alleged offences under Sections 406 and 420 IPC, that the petitioners, neither made any false representation pursuant to entrusted with any property by the complainant and on receipt of the property, have



converted into their property, that the petitioners neither by dishonest or fraudulent representation to the defacto complainant nor they had acted on the strength of the same, that the petitioners are not parties to the alleged hand written receipt issued to the defacto complainant and that the complainant in order to wreak vengeance has given this false and vexatious complaint by giving criminal color to the business transaction.

8.It is not in dispute that similar to the present FIR, one another person by name Gurusamy has also lodged a similar complaint against the first petitioner and the also said Ramanathan and as per the direction of the learned Judicial Magistrate under Section 156 (3) Cr.P.C., FIR came to be registered in Crime No.2107 of 2019 on the file of the first respondent for the alleged offences under Sections 406, 420, 465 and 506(1) IPC and that the first respondent, after completing the investigation, has filed a final report against all the three persons by including the second petitioner herein and the case was taken on file in C.C.No.667 of 2021 on the file of the learned Judicial Magistrate No.II, Madurai.

9.The learned Senior counsel for the petitioners would submit that the petitioners herein have filed petitions in Crl.O.P.(MD) Nos.16278 & 16281 of 2021 under Section 482 Cr.P.C. to call for the entire records pertaining to the charge sheet filed in C.C.No.667 of 2021 on the file of the learned Judicial Magistrate No.II, Madurai and quash the same and that this Court, vide order dated 06.12.2021, has allowed the criminal original petitions and thereby, quashed the impugned proceedings as far as the petitioners are concerned.

10.In the common order, passed in Crl.O.P.(MD)Nos.16278 & 16281 of 2021, my esteemed brother Hon'ble Justice G.R.Swaminathan has discussed the ingredients of the offence elaborately and came to the decision that the offences under Sections 406, 420, 465 and 506(1) IPC are not made out and that a simple case of breach of contract has been given a criminal color.

"8.I carefully considered the rival contentions and went through the materials on record. The undisputed fact is that Gurusamy, the father of the bridegroom, made payment directly to the hall manager (A2 Ramanathan). It is obvious that A2 had pocketed the said amount and issued a fake receipt. Booking was done on 02.06.2019. A2 had played a similar mischief in the cases of quite a few other persons. When this came to light, A1 Thirumurthy gave a complaint against Ramanathan and the same was also registered as Crime No.1194 of 2019 on 03.08.2019. When Gurusamy met Thirumurthy on 29.08.2019, in all fairness, Thirumurthy should have owned up the responsibility. Instead, Thirumurthy had taken the stand that unless Gurusamy made a fresh payment, the hall will not be allotted to him on the scheduled date. It was this



stand of Thirumurthy that led to registration of impugned Crime No.2107 of 2019.

9. When Thirumurthy moved this Court seeking anticipatory bail, while granting relief, I had stipulated that Thirumurthy must make good the loss. I thought that the performance of marriage had only been postponed so that the hall could be engaged on another date without making fresh payment. Unfortunately, the marriage itself got cancelled and Thirumurthy could not atone for the misdeed of A2 Ramanathan.

10. Now the question that arises for consideration is whether the first respondent is justified in filing final report not only against Ramanathan but also against Shri. Thirumurthy and Shri. Ramesh Rajan. Gurusamy never had any grouse against Shri. Ramesh Rajan. Be that as it may, final report came to be filed against the petitioners herein and cognizance of the offences has also been taken.

11. In my view, Gurusamy could have filed a case against the hall management for deficiency of service before the Consumer Forum. He could have also filed a civil suit for damages. I fail to understand as to how a criminal case would lie against the trustees. More so, the case of the trustees is that the hall manager had committed criminal breach of trust and acts of forgery by issuing bogus receipts.

12. The ingredients of the offence of cheating are totally absent. The petitioners did not deceive Gurusamy. They did not fraudulently or dishonestly induce him to pay Rs.2,95,000/-. Gurusamy had come to the office of the marriage hall and paid the said amount to A2 Ramanathan in cash. The petitioners herein were nowhere in the scene. Even Gurusamy never alleged that the petitioners herein induced him to do anything. Hence, the offence under Section 418 of IPC will not lie.

13. The bogus receipt was issued by A2 Ramanathan directly to Gurusamy. When the hall management became aware of the criminal activities of A2 Ramanathan, they gave a complaint against him leading to Registration of Crime No.1194 of 2019. That clearly shows the bona fides on the part of the petitioners herein. It is earlier in point of time also. While Crime No.1194 of 2019 was registered on 03.08.2019, Gurusamy's complaint



was registered only on 27.11.2019. Of course, he had the complaint on 27.08.2019. The fact remains that Gurusamy's complaint is subsequent in point of time. Hence, the offences set out in Section 468 and 469 of IPC are also not made out.

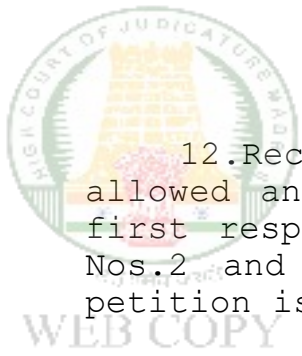
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14. Invocation of Section 383 IPC is absurd. Section 383 IPC can be invoked only if the accused puts the victim in fear of any injury either to himself or any other and thereby dishonestly induce the victim to deliver any property or valuable security. In this case, the first accused no doubt made an unfair demand on Gurusamy that he should make a fresh payment. This will by no stretch of imagination constitute the offence of extortion.

15. The offence of criminal intimidation will be made out only if the accused threatens the victim with any injury to his person, reputation or property. In this case, there is no such allegation. Merely because the first accused refused to consider the defacto complainant's request for refund, that would not convert the transaction to one of criminal intimidation. Courts have held that for the offence to be made out, a real threat should have been held out. The victim should have felt a sense of alarm [(1988) L.W. (Crl.) 178 (Noble Mohandass V. State)]. Nothing of the sort happened in this case. The elementary ingredients of the offence under Section 506(i) of IPC are absent.

16. A simple case of breach of contract has been given a criminal colour. Even in tort, the erring party can be fastened with liability only for proximate consequences and not the remote ones. Likewise, the petitioner-trustees cannot take the blame for the far-reaching matrimonial consequences that befell the bridegroom."

11. The learned Senior counsel for the petitioners, on instructions, would further submit that the petitioners would deposit a sum of Rs.2,50,000/- (Rupees Two Lakhs and Fifty Thousand only) to the credit of Crime No.1540 of 2019 on the file of the Court of the Judicial Magistrate No.II, Madurai within one week from the date of receipt of a copy of this order and on such deposit, the learned Magistrate is directed to issue notice to the defacto complainant and permit him to withdraw the said amount without prejudice to his claim for higher compensation or damages before the appropriate Forum.



12. Recording the above, this criminal original petition is allowed and the FIR in Crime No.1540 of 2019 on the file of the first respondent stands quashed so far as the petitioners/accused Nos.2 and 3 are concerned. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

(*) Corrected as per the order of this Court, dated.21.04.2023

Sd/-

Deputy Registrar (CA & MC)

// True Copy //

/05/2023

Sub Assistant Registrar(CS)

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 be substituted to the order already despatched on 10.04.2022.

To

1.The Judicial Magistrate No.II,
Madurai.

2.The Inspector of Police,
Thallakulam Police Station,
Madurai City.

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

+1 CC to M/s.R.GANDHI, Advocate (SR-4614[F] dated 07/02/2022)

Crl.O.P. (MD)No.16843 of 2019

and

Crl.M.P. (MD)No.10008 of 2019

04.02.2022

SS/07.03.2022 : 6P/5C

SI/(28.04.2023) 6P/5C