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Crl.O.P.No.1031 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24..03..2023

Coram

THE HON'BLE MR.JUSTICE SUNDER MOHAN

Criminal Original Petition No.1031 of 2021

&

Crl.M.P.No.626 of 2021

V.Sureshkumar @ Alagesan

..... Petitioner

-Versus-

1.State by

The Inspector of Police,
B2, R.S.PUram Police Station (Crime),
Coimbatore District.
[Crime No.1035 of 2008]

2.Bhuvaneshwari

.... Respondents

Petition filed under under Section 482 of Criminal Procedure Code, 1973, all for the entire records pertaining to the case in C.C.No.16 of 2011 on the file of the Judicial Magistrate-I, Coimbatore, and to quash the same.

For Petitioner : Mr.S.Gunalan

*For Respondents : Mr.A.Damodaran,
Addl. Public Prosecutor for
R1
No appearance for R2*



Crl.O.P.No.1031 of 2021

ORDER

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This petition is to quash the criminal proceedings in C.C.No.16 of 2011 on the file of the learned Judicial Magistrate-I, Coimbatore, for the alleged offences u/s 406, 420, 506(ii) of IPC.

2. The de facto complainant is the wife of the petitioner. It is alleged in the impugned final report that the de facto complainant was doing the business of converting pure gold into ornaments; that she had handed over 259 grams of gold to one Ayyappan for the purpose of making ear rings on 23.10.2008; that on 10.11.2008, the petitioner, without her knowledge, had dishonestly induced the said Ayyappan and obtained delivery of 259 grams of gold jewellery and thus, he had committed the offences punishable u/s 406, 420 and 506(ii) of IPC.

3. The learned counsel for the petitioner would submit that the entire allegation is false. The case of the de facto complainant that she had handed over the 259 grams of gold on 23.10.2008 cannot be true since on the said date she was travelling along with the petitioner which could be evident from the reply given by the Southern Railways on the application made by the petitioner under The Right to Information Act,



Crl.O.P.No.1031 of 2021

2005. Even if such allegation is accepted to be true, that will not constitute an offence u/s 406 or u/s 420 of IPC. The petitioner had not committed any breach of trust or practised deception on the respondent/de facto complainant.

4. The learned counsel for the petitioner would further submit that subsequent to the filing of the impugned FIR, the de facto complainant had filed a petition for divorce on the ground of cruelty against the petitioner. Before the Family Court, the de facto complainant had stated that there was no possibility for reunion and she would not claim any maintenance from the petitioner. Hence, the learned counsel would submit that the impugned proceedings is an abuse of process of law.

5. The learned Additional Public Prosecutor, would on the other hand, submit that the allegations in the impugned final report constitute offences alleged against the petitioner and that the plea of the petitioner that on the date of the alleged crime, the de facto complainant was travelling with him in a train has to be adjudicated only during trial and hence, he prayed for dismissal of the quash petition.



Crl.O.P.No.1031 of 2021

6. Though notice was sent to the de facto complainant, it was returned with an endorsement as “Door Locked”.

7. This court on a reading of the impugned final report finds that indisputably the property was not entrusted to the petitioner by the de facto complainant. In the absence of entrustment no offence u/s 406 of IPC could be made out. That apart, it is not the case of the de facto complainant that any false representation was made to her and she was induced to deliver any property. The allegation of the de facto complainant is that her property was wrongly taken from Ayyappan who is cited as LW2 in the impugned final report. Since there was no deception practised by the petitioner on her, the offence u/s 420 of IPC is also not made out.

8. As regards offence u/s 506(ii) of IPC, this court had been repeatedly held that mere words are not sufficient but there must be a real threat to attract the offence of criminal intimidation. Furthermore, this court finds that subsequent to the filing of the impugned final report, the de facto complainant was granted divorce from the petitioner and in the matrimonial proceedings, the de facto complainant has stated that there



Crl.O.P.No.1031 of 2021

was no chance of reunion and she did not have any claim against the petitioner.

9. For all the above reasons, the impugned final report is liable to be quashed.

In the result, this Criminal Original Petition is allowed and the criminal proceedings in C.C.No.16 of 2011 on the file of the Judicial Magistrate-I, Coimbatore, is quashed. Consequently, the connected miscellaneous petition is closed.

24..03..2023

Index : yes / no
Neutral Citation : yes / no
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To

- 1.The Judicial Magistrate-I,
Coimbatore,
2. The Inspector of Police,
B2, R.S.PUram Police Station (Crime),
Coimbatore District.
- 3.The Public Prosecutor,
High Court, Madras.



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Crl.O.P.No.1031 of 2021

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Crl.O.P.No.1031 of 2021

24..03..2023