



Crl.O.P.No.8797 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

Crl.O.P.No.8797 of 2020

and

Crl.M.P.Nos.4173 & 4174 of 2020

1. T. K. Venkatachalam

2. Yasotha

... Petitioners / A1 & A2

-Vs-

1.State rep. by its

Inspector of Police,
District Crime Branch,
Salem, Salem District.
(Crime No.21 of 2017)

...1st Respondent / Complainant

2.S. Poongodi

... 2nd Respondent / Defacto Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records of charge sheet in C.C.No.109 of 2019 on the file of the learned Judicial Magistrate No.VI, Salem and quash the same.



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For Petitioners	: Mr. M. R. Jothimanian
For R1	: Mr. A. Damodaran Additional Public Prosecutor
For R2	: Mr. S. Giritharan

ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.108 of 2019 on the file of the Judicial Magistrate Court No.VI, Salem, filed for the alleged offences under Sections 120B, 420, 323, 506(i) IPC and Section 4 of the Tamil Nadu Prohibition of Women Harassment Act.

2.It is alleged in the final report that the 1st petitioner and the defacto complainant had a physical relationship and exploiting the said relationship, the 1st and 2nd petitioners extracted money from the defacto complainant by making false promise; that when the defacto complainant sought return of the money paid by her to the 1st petitioner, the petitioners abused her in filthy language; that the petitioners had cheated her in all a sum of Rs.80,00,000/- in the aforesaid manner and they are liable for the aforesaid offences.



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3.The learned counsel for the petitioner would submit that even as per the allegations in the final report, the 1st petitioner and the 2nd respondent were close to each other and money transactions were made by the 2nd respondent. On account of the relationship it cannot be said that there was deception. In any case, the 1st petitioner had executed pro-note in favour of the 2nd respondent and the matter is civil in nature. However, the 2nd respondent has not chosen to file a civil suit to recover the money. The 1st petitioner was arrested during investigation was sought to be remanded before the Judicial Magistrate NoI, Mettur. The learned Judicial Magistrate found that there was no intention of cheating on the basis of the allegations made in the FIR. Hence, refused remand of the 1st petitioner.

4.The learned counsel further submitted that the civil transactions is sought to be given a criminal colour. The learned counsel further submitted that in any case, there is no allegation as against the 2nd petitioner, who is the wife of the 1st petitioner. Even as per the final report, the alleged transactions took place only on account of the close relationship of the 2nd respondent with the 1st petitioner and in such



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circumstances, the 2nd petitioner cannot be held liable for any of the alleged offences. Hence, he prayed for quashing of the impugned proceedings.

5.The learned Additional Public Prosecutor and the defacto complainant submitted that there are materials in the impugned final report to show that both the petitioners had made false representation to the defacto complainant and extracted money by stating that their property would be brought for auction and in all they have collected a sum of Rs.80,00,000/-. Though the 2nd respondent could have filed suit for recovery of money, the offence of cheating is made out and the 2nd respondent can pursue both the proceedings and the proceedings cannot be quashed merely because the 2nd respondent had an option to file a Civil Suit. Hence, they prayed for dismissal of the quash petition.

6.This Court on a reading of the impugned final report that the allegation is primarily against the 1st petitioner. He is said to have misused the relationship between him and the 2nd respondent and extracted money. It is also alleged that he had executed a pro-note and



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promised to repay the money obtained from the defacto complainant. The allegation that the 2nd petitioner was also part of the alleged misrepresentation belies the defacto complainant case that the 1st petitioner misused the relationship with her and obtained money. In such circumstances, the 2nd petitioner cannot be said to be privy to the transaction between the 1st petitioner and the defacto complainant. Thus the allegation against the 2nd petitioner cannot be sustained.

7.Hence, this Court is of the view that the prosecution of the 2nd petitioner is an abuse of process of law and hence, the proceedings against the 2nd petitioner alone is liable to be quashed. Accordingly, the impugned proceedings in C.C.No.108 of 2019 on the file of the learned Judicial Magistrate No.VI, Salem is quashed against the 2nd petitioner.

8.The learned counsel for the petitioner would submit that the matter is purely civil in nature and even the prosecution against the 1st petitioner cannot be continued. This Court is of the view that whether there was deception at the inception or whether the matter is purely civil in nature has to be adjudicated only before the trial Court. Hence, this



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Court is not inclined to entertain the quash petition insofar as the 1st petitioner is concerned. The learned Judicial Magistrate No.VI, Salem may proceed against the 1st petitioner in accordance with law. However, the personal appearance of the 1st petitioner before the trial Court is dispensed with, unless the learned Judicial Magistrate No.VI, Salem considers his appearance necessary for the progress of the trial.

9.Since the case is of the year 2019, the learned Judicial Magistrate No.VI, Salem, may expedite the trial process and in any event, preferably conclude it within a period of six months from the date of receipt of a copy of this order.

10.With the above observations, this Criminal Original Petition is partly allowed. Consequently, connected Criminal Miscellaneous Petitions are closed.

19.06.2023

smv

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order



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To,
WEB COPY

- 1.The Inspector of Police,
District Crime Branch,
Salem, Salem District.
- 2.The Judicial Magistrate No.VI, Salem.
- 3.The Public Prosecutor,
High Court of Madras.



WEB COPY



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SUNDER MOHAN,J.
smv

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