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Crl.O.P.Nos.17094, 15779, 17095, 17186, 17200, 17531 and 18476 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.Nos.17094, 15779, 17095, 17186, 17200, 17531 and 18476 of 2021
and
Crl.M.P.Nos.9367, 9369, 8599, 8600, 9377, 9379, 9416, 9417, 9434, 9436,
9625, 9626, 10135 and 10137 of 2021

Crl.O.P.No.17094 of 2021:-

Subramaniyam

... Petitioner

Vs.

1.The Inspector of Police,
Mahalingapuram Police Station,
Pollachi.

2.R.Kuyilan

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C.
praying to call for the entire records relating to P.R.C.No.19 of 2013 pending on
the file of the Judicial Magistrate – II, Pollachi and quash the same.

In all Crl.O.Ps

For Petitioners : Mr.Manishankar, Senior Counsel
for M/s.Arun C.Mohan

For R1 : Mr.A.Gopinath
Government Advocate (Crl. Side)

For R2 : Notice Served, No Appearance



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COMMON ORDER

The petitioners in all the petitions are arrayed as A1, A2, A4 to A9. The third accused had already filed a petition to quash the proceedings and the same was allowed. All the petitioners have filed petitions to quash the proceedings in P.R.C.No.19 of 2013 pending on the file of the learned Judicial Magistrate – II, Pollachi. Therefore, this Court is inclined to pass common order.

2. The case of the prosecution is that the deceased was living in Pollachi along with his family members. His son was running a bus company and was also doing real estate business. He approached the third accused for arranging loan. The third accused arranged loan to the tune of Rs.49,50,000/- from one Rajeshwari Auto Investment Finance Company for interest at the rate of 6% per annum. A1 and A2 are share holders of the said Rajeshwari Auto Investment Finance Company. After availing loan, there was failure in payment of interest and there was also non-payment of the principal amount. The deceased was a Doctor and he was running a Clinic. All the accused gathered together in the hospital run by the deceased, acted unlawfully and used unparliamentary words in front of the hospital staff. Thereafter, on the strength of the Power of Attorney executed in favour of the second accused by the daughter of the



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deceased while borrowing loan, the second accused had executed a sale deed in favour of the 7th accused registered vide sale deed dated 06.08.2010 in Document No.4159 of 2010. Further, by misusing the Power of Attorney, the second accused also transferred the land and building of the hospital run by the deceased in favour of one R.V.K.Krishna. The accused also charged exorbitant interest. Since the deceased failed to settle the loan amount nor pay any interest, the accused harassed him in front of others by using unparliamentary words. It caused mental agony to the deceased to commit suicide. Hence, the complaint.

3. On receipt of the complaint, the first respondent registered an FIR in Crime No.424 of 2010 under Section 174 Cr.P.C. After sometime, a suicidal note of the deceased was found and on the strength of the said suicidal note, the first respondent altered the offences into one under Sections 306 IPC and other offences. After completion of investigation, final report has been filed for the offences under Sections 34, 147, 306, 406 and 420 IPC r/w Sections 4 and 9 of Tamil Nadu Prohibition of Charging Exorbitant Interest Ordinance Act, 2003 and it is pending for committal in P.R.C.No.19 of 2013.

4. The learned Senior Counsel appearing for the petitioners would submit that there is no material to warrant the charge under any of the offences



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as alleged by the prosecution. The accused were charged for the offences including abetment of suicide, dishonest and misappropriation of property, criminal breach of trust, cheating and rioting. Already the third accused approached this Court and this Court quashed the proceedings in Crl.O.P.No.26639 of 2013. This Court by an order dated 08.06.2021 observed that the report of the handwriting expert revealed that on the basis of the present material it is not possible to offer any reliable opinion on the red enclosed signature and writings stamped and marked as Q1 to Q8 on a comparison with the red enclosed signatures and writings similarly stamped and marked as A1 to A79. Therefore, the suicidal note is clouded with mystery. It does not confirm with the handwriting of the deceased. The alleged occurrence had taken place on 19.08.2010. After showing the body, Railway Police registered FIR in Crime No.424 of 2010 under Section 174 Cr.P.C. After a period of nearly one month, the son of the deceased found some suicidal note and on the strength of the suicidal note, the first respondent registered another FIR in Crime No.496 of 2010 on 17.09.2010 for the offences under Sections 306, 420 IPC and Section 9 of Tamil Nadu Prohibition of Charging Exorbitant Interest Ordinance Act, 2003. It is fatal to the case of the prosecution on the basis of the handwriting expert opinion. Though, this Court quashed the entire proceedings as against the third accused, on the ground of compromise, this



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Court quashed the entire proceedings on merits. All the allegations are bald and vague and no specific overtact as against each of the accused, in order to attract the offence under Section 306 IPC. Even as per the suicidal note, there was no instigation by the accused soon before the death of the deceased. There was no whisper about the accused visiting to the hospital or residence of the deceased.

5. The learned Government Advocate (Crl.side) submitted that the deceased committed suicide only because of the mental agony suffered by him due to the accused. The first and second accused are the share holders of the Rajeshwari Auto Investment Finance Company. The son of the deceased approached for loan with the third accused. In turn, the third accused arranged loan from A1 and A2. Thereafter, they paid interest as agreed by them. Even then, they demanded exorbitant interest and frequently visited the hospital run by the deceased and demanded huge money. That apart, while borrowing the loan, a Power of Attorney was executed in favour of one of the accused by the daughter of the deceased. In turn, the accused had executed registered sale deed in favour of A7 vide Document No.4159 of 2010 dated 06.08.2010, thereby they committed breach of trust and cheated the family of the deceased. Therefore, all the offences are clearly made out as against the accused persons and the grounds raised by petitioners can be considered only before the Trial Court.



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6. Heard the learned counsel on either side and perused the materials available on records.

7. There are totally 9 accused. The petitioners are arrayed as A1, A2, A4 to A9. The third accused had already filed a quash petition before this Court in Crl.O.P.No.26639 of 2013 and the same was allowed by an order dated 08.06.2021. As far as the third accused is concerned, he settled the issue amicably with the defacto complainant and filed a compromise memo dated 05.08.2020. Though they settled their issues, this Court considered the quash petition on merits also by referring the handwriting expert opinion. The handwriting expert was examined as L.W.24 and he deposed that on the basis of the present material it is not possible to offer any reliable opinion on the red enclosed signature and writings stamped and marked as Q1 to Q8 on a comparison with the red enclosed signatures and writings similarly stamped and marked as A1 to A79. Therefore, the suicidal note is clouded with mystery and it cannot be relied upon by the prosecution in order to bring the charge under Section 306 IPC as against the accused. It is also seen that the deceased was a Doctor. He had retired from Government service and he was running a Clinic on his own. The suicidal note viz., the way in which written in Tamil, is not upto the standard of a Doctor. It appears to have been written by an illiterate



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person. Therefore, it is a cooked up one for the purpose of registering another FIR and in order to foist a case against the petitioners who had lent money.

8. On the complaint lodged by the Station Master, Pothanur Railway Police registered FIR in Crime No.424 of 2010 for the offence under Section 174 Cr.P.C. During investigation, it came to be known that the accused 1 and 2 were running a finance business and the son of the deceased had borrowed loan with the help of the third accused from accused 1 and 2. After production of suicidal note of the deceased, the first respondent registered FIR in Crime No.496 of 2010 on 17.09.2010 for the offences under Sections 306, 420 IPC and Section 9 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Ordinance Act, 2003. After completion of investigation, the first respondent filed final report and the same is pending for committal in P.R.C.No.19 of 2013. The second FIR was registered only based on the suicidal note which was produced by the son of the deceased. As per the handwriting expert opinion, the said suicidal note was not written by the deceased and it does not confirm with the handwriting of the deceased. Even assuming that the said suicidal note was written by the deceased, it did not whisper about the visit of the petitioners soon before his death. On 06.08.2010, the second accused refused to re-register the sale deed and refused to return back a sum of Rs.20,00,000/-. Therefore, the



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deceased and his family met the first accused. He also scolded them in his office and they were driven out from his office. They also informed that later they will inform on 17.08.2010. Therefore, there was no allegation as against the petitioners that they instigated/abetted the deceased to commit suicide.

9. That apart, initially FIR was registered by the Railway Police under Section 174 Cr.P.C. In the said FIR, there is no whisper about the alleged suicidal note left by the deceased. Subsequently, the suicidal note was seized from the house of the deceased that too by his son and produced before the first respondent. On the strength of the said suicidal note another FIR has been registered in Crime No.496 of 2010.

10. As stated supra, a perusal of suicidal note discloses that there is absolutely no specific allegations levelled against the petitioners in order to attract the offences under Section 306 IPC. There is no general allegations as against all the accused. From the suicidal note, it is not possible to conclude that the deceased committed suicide only on the instigation/abetment by the accused. There is absolutely no material available on record to establish that the petitioners had any motive or intention to instigate the deceased to commit suicide.



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11. It is relevant to extract the provisions under Section 107 IPC which is as follows:-

107. Abetment of a thing.—*A person abets the doing of a thing, who—*

“First.—Instigates any person to do that thing; or

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing. Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.”

12. It is also relevant to extract the provisions under Section 306 IPC as follows:-

“306. Abetment of suicide.—*If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”*

13. The reading of the above said provisions makes it clear that the ingredients contemplated under the above the provisions are not made out from the materials available on record in this case. The abetment involves mental process of instigation, instigating the person or intentionally aid the person in doing of a thing. In case of conspiracy also it would involve that mental process



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and entering into conspiracy for doing of that thing. Mere active role cannot be described as “instigate” or aid doing of the thing is required before a person can be set to be abetting the commission of offence under Section 306 IPC. Therefore, there cannot be active role played by the accused which get described as “instigate or aid to commit suicide”. Even as per the suicidal note, it does not disclose the ingredients to constitute the offence under Section 306 IPC. As per the suicidal note, two days before the date of occurrence, there was some allegation that the petitioners scolded him and threatened him. Even assuming that the said occurrence happened, a word uttered in fit of anger or emotion without any intention do not amount to instigation. Further a word “instigate” denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. The presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or in a spur of the moment cannot be taken to be uttered with mens rea.

14. Therefore, this Court has no hesitation to hold that allowing the proceedings to continue against the petitioners would amount to clear abuse of process of Court. Insofar as other offences under Sections 34, 147, 406 and 420 IPC and Section 4 and 9 of the Tamil Nadu Prohibition of Charging Exorbitant



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Interest Ordinance Act, 2003 are concerned, the deceased had approached the third accused to arrange loan for his son who had suffered loss in the business.

Therefore, there was neither inducement nor the defacto complainant delivered any property even for security. Therefore, the offence under Section 420 of IPC is not at all attracted as against the petitioners.

15. In order to attract the offence under Sections 147 of IPC, there must be force or violence used by an unlawful assembly. Even according to the case of the prosecution, there was no unlawful assembly that too for any rioting. The term unlawful assembly says that five or more persons is designated an “unlawful assembly”, if the common object of the persons composing that assembly is to overawe by criminal force, or show of criminal force. Further, to resist the execution of any law, or of any legal process; or to commit any mischief or criminal trespass, the common object of the persons composing that assembly is to overawe by criminal force, to resist the execution of any law, or of any legal process; to commit any mischief or criminal trespass. The common object of the persons composing with assembly can be formed on the spur of the moment and it does not require prior deliberations.



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16. In the case on hand, there was no unlawful assembly by the accused and there was no rioting in order to attract the offence under Section 147 IPC.

Like wise, in order to constitute the offence of criminal breach of trust, it is essential that the prosecution must prove first of all that the accused was entrusted with some property or with any dominion over it. It has to be established further that in respect of property so entrusted there was dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, or by someone else which the accused wilfully suffered to do.

17. Even according to the case of the prosecution, nothing was entrusted with the accused by the deceased in order to attract the offence under Section 406 IPC. Further, there was no common intention among the accused to instigate the deceased to commit suicide. Therefore, the entire proceedings initiated against the petitioners cannot be sustained and it is liable to be quashed.



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31.10.2023

Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order
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To

1. The Judicial Magistrate – II, Pollachi.
2. The Inspector of Police,
Mahalingapuram Police Station,
Pollachi.
3. The Public Prosecutor
Madras High Court.



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G.K.ILANTHIRAIYAN, J.

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