



Crl.O.P.No.4511 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2023

CORAM

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.4511 of 2022
and Crl.M.P.No.2309 of 2022

1.C.Rajaggopal
2.Tamil @ P.Purushothaman
3.P.Singaravelu

.. Petitioners

Versus

1.The State Rep by
The Sub-Inspector of Police
Choonambedu Police Station
Choonambedu
Kanchipuram District

2.M.Pazhani

.. Respondents

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.5 of 2021 on the file of learned District Munsif Cum Judicial Magistrate, Cheyyur, Chengleput District and quash the same.

For Petitioners : Mr.S.R.Raaghavan

For Respondents : Mr.S.Santhosh for R1
Government Advocate

Mr.B.Raja for R2

ORDER

This Criminal Original Petition has been filed seeking to call for the records in C.C.No.5 of 2021 on the file of learned District Munsif Cum Judicial



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Magistrate, Cheyyur, Chengleput District and quash the same.

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2. The learned counsel for the petitioners submitted that the second respondent/defacto complainant gave a false complaint against the petitioners alleging that he borrowed a sum of Rs.30,000/- from the first accused. It is stated in the complaint that taking advantage of his urgency, the accused made him to part with five blank promissory notes with a signature at the time of lending money in 2001. He was paid Rs. 26,500/- after deducting Rs.3500/- towards interest. In 2002, he repaid the entire principal along with interest to the tune of Rs.53,108/-, however, the first accused did not return the blank promissory notes. Despite making several request, he refused to hand over the black promissory notes. Thereafter, using one of the blank promissory note, he fabricated the promissory note as if the second respondent borrowed a sum of Rs.1 lakh from one Mr.P.Purushothaman/second respondent herein. In the said promissory note, Mr.C.Rajagopal/first petitioner herein had signed as witness and Mr.P.Singaravelu/third petitioner herein filled the promissory note. The accused colluded together, created false promissory note and cheated the second respondent. When, it was questioned, the accused said to have criminally intimidated him/defacto complainant with a death threat and abused him. In this regard, he gave a complaint to the police. For giving complaint, the first



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accused/Mr.C.Rajagopal had threatened the defacto complainant on 14.06.2011

and once again, he made death threat on 23.06.2011 at about 10.30 am.

Therefore, the complaint was given. On the basis of the complaint, FIR in Crime No.287/2011 was registered for the offences under Section 341, 294(b), 506(i) and 420 IPC by Choonambedu Police Station.

3. It is submitted by the learned counsel for the petitioners that the allegations in the FIR are totally false for the reasons that nobody would give five blank promissory notes while borrowing a sum of Rs.30,000/- and nobody would pay the principal and interest to the tune of Rs.53,108/- without getting blank promissory notes. Even assuming promissory notes were given, the borrowal from accused C.Rajagopal and borrowal from P.Purushotthaman are totally two different transactions. On the basis of borrowal from P.Purushotthaman and execution of promissory notes, a suit in O.S.No.6 of 2010 on the file of Sub-Court, Maduranthagam was instituted by P.Purushotthaman. The suit was decreed in favour of P.Purushotthaman on 12.11.2018 and an appeal was filed in A.S.No.1 of 2019 before the Principal District and Sessions Court, Chengalpet.

4. He further submitted that during the Trial, the defacto complainant threatened the accused 2 and 3 not to give evidences in O.S.No.6 of 2010.



Therefore, a complaint dated 07.04.2011 was given to the police. Since, no action was taken, complaint was sent to various authorities. Even thereafter, no action was taken. Thus, it is clear from the narration of the case, the complaint dated 23.06.2011 is a motivated and false complaint. The investigation conducted on the basis of the complaint dated 23.06.2011 has not taken into consideration the true facts and the impugned final report is filed supporting the case of the second respondent. Though, this case was pending from the year 2013, viz., in C.C.No.105 of 2013 on the file of Judicial Magistrate, Maduranthakam, not even a single witness was examined. The accused are residing Pondicherry, whereas, the defacto complainant is living nearby Maduranthakam. The accused are unnecessarily being harassed to appear before the Court without any progress. For all these reasons, the learned counsel for the petitioner submitted that the impugned final report has to be quashed.

5. In response, the learned counsel for the second respondent submitted that the defacto complainant borrowed a sum of Rs.30,000 from the first accused in the year 2001. At that time, he was forced to part with five promissory notes and five stamp papers. In 2002, he returned the principal amount with interest to the tune of Rs.53,108/-. When demanded the return of blank promissory notes and stamp papers, the accused refused to return the blank promissory notes and



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stamp papers. On 13.03.2009, a legal notice was sent by claiming Rs.1 lakh on the basis of the above promissory notes. Immediately, a reply was sent in 24.03.2009. As against the judgment in OS.No.6 of 2010, a first appeal in A.S.No.1 of 2019.

6. Learned Counsel for the second respondent submitted that the case was transferred to the District Munsif cum Judicial Magistrate, Cheyyur in 2019. Due to the Covid-19 situation, the case was taken on file in 2021 in C.C.No.5 of 2021. Second respondent received summons on 10.01.2023 for giving evidences. Therefore, appeared before the learned Magistrate, but, he was not examined in the Court. The defacto complainant is ready to give evidence, whenever he receives summons from the Court. He also submitted that the accused are in the habit of cheating the gullible victims, who are in need of money by getting blank promissory notes and other documents, depriving them of their properties. The statement of witnesses are also recorded in this regard and produced in this case. It is also submitted that enough materials are available to proceed against the accused in the case.

7. The learned Government Advocate would submit that he will give suitable instructions to the respondent police for expeditious trial by producing



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witnesses at short intervals. It is also submitted that there is no regular Additional Public Prosecutor for Judicial Magistrate, Cheyyur and in-charge Magistrate is attending regular Court, but also other Courts as well.

8. Perused the records. From the narration of the facts above, the brief case of the prosecution is that the the second respondent borrowed a sum of Rs.30,000/- from the first accused. At that time, the first accused made him to part with five blank promissory notes with his signature. Thereafter, despite the payment of Rs.53,108/- being the principal with interest, to the first accused, the first accused refused to return the blank promissory notes. However, using one of the promissory notes, he made to institute a suit for recovery of sum of Rs.1 lakh with the help of P.Purushothaman/second petitioner herein. It is said that the first accused is the witness in the promissory note and the third accused is the person who filled the promissory note. When this was questioned by the second respondent, the first accused is said to have made a death threat and also stated that he would get all his properties and eliminate his family members. On 14.06.2011 and 23.06.2011, it is claimed that, criminal intimidations continued.

9. Of-course, certain questions arises as to whether the second respondent could have paid Rs.53,108/- without getting any acknowledgement/receipts for



repayment or without receiving the alleged black promissory notes said to have been handed over to the first accused at the time of borrowal. The allegations of criminal intimidation and other allegations of abuse can be made by anyone. This Court finds there are statements of witnesses namely Mr.Pazhani Aachari, Suresh, Sekar, Thirunavukarasu, who had supported the case of the prosecution with regard to the incident on 23.06.2011. Statement is also recorded from one Mrs.Parimala. She stated that the first accused Mr.Rajagopal would lend money and then get the property of borrower by hook or by crook. The prosecution had also cited witnesses Mr.Veerabadhiran, Mrs.Mangalakshmi, Mrs.Virudhambal, Mrs.Indrani in support of its case.

10. In light of the materials available before this Court and in light of the contradictory positions taken by the parties, this Court sitting in 482 Cr.P.C. cannot conduct a roving investigation as to the veracity of the claim made by rival parties and it is not the job of this Court. This Court finds that there are materials enough available to proceed with the case. Hence, this Criminal Original Petition is liable to be dismissed. At the same time, the learned Judge is directed to dispose of the case as expeditiously as possible preferably within a period of three months from the date of receipt of a copy of this Order by posting the case at short intervals.



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11. At this juncture, the learned counsel for the petitioners submitted that the petitioners have been attending the Court for the last 9 years without any progress. Therefore, he prayed for dispensing with the personal appearance of the petitioners. Though a separate petition is not filed, this Court considering the fact that the case is pending without any progress, directs the trial Court not to insist upon the presence of the petitioners for every hearing. The petitioners may be asked to appear before the Court whenever required, like for receiving copies, for answering the charges, for questioning under section 313 Cr.P.C. and on any other date required by the trial Court. The petitioners must ensure that they are being represented by their counsel on other dates for smooth conduct of the trial. They must also file an undertaking affidavit that they will not challenge their identification by the witnesses.

12. With the above directions, this Criminal Original Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

20.01.2023

Internet: Yes/No
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To



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1. The District Munsif Cum Judicial Magistrate
Cheyyur, District

2.The Sub-Inspector of Police
Choonambedu Police Station
Choonambedu
Kanchipuram District

3. The Public Prosecutor,
High Court, Madras.

G.CHANDRASEKHARAN,J.



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