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CrI.O.P No.19960 of 2---

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **04.01.2023**

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

CrI.O.P No.19960 of 2021
and CrI.M.P. No.10855 of 2021

1. Ijasbasha
2. Asipjipran

... Petitioners

Vs.

1. The State represented by
The Inspector of Police,
DCB, Tiruvannamalai.

2. Sangeetha

... Respondents

Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records relating to FIR No.5 of 2021 on the file of the Inspector of Police, District Crime Branch, Thiruvannamalai and to quash the same.

For Petitioners : Mr.L.Jaivenkatesh

For Respondent-1 : Mr. A.Gopinath
Government Advocate (crl.side)
2 : No appearance



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ORDER

This Criminal Original Petition has been filed to call for the records relating to FIR No.5 of 2021 on the file of the Inspector of Police, District Crime Branch, Thiruvannamalai and to quash the same.

2. Heard the learned counsel for the petitioner and the learned Government Advocate for the first respondent. No representation for the second respondent.

3. The case of the prosecution as it appears from the complaint given by the second respondent / defacto complainant is that she used to lend money to the persons involving in silk yarn business by getting the silk yarn as security. In that style she had been financing the petitioners for nearly four years. According to the complaint she had lent a total sum of Rs.49,00,000/- to the petitioners at a stretch of four years and for which the first petitioner has given a cheque for a sum of Rs.5,00,000/-. The second petitioner has given a cheque for a sum of Rs.50,000/- and they did not give any cheque for the rest of the amount and have been cheating the second respondent. Even when the defacto complainant went to the native place of



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the petitioners to collect the balance amount, they did not give any responsible answers and refused to return the amount. Hence a case has been registered against the petitioners in Cr. No.442 of 2017 for the offence under Section 406, 420 & 506(i) IPC.

4. The learned counsel for the petitioners submitted that the transaction between the petitioners and the second respondent is purely a money transaction and for which criminal colour has been given; it is an indirect way of recovering the loan amount given to the petitioners; the ingredients of the complaint does not show anything to make out an offence punishable under Section 406, 420 and 506(i) IPC; hence the FIR should be quashed.

5. The learned Government Advocate (crl.side) submitted that the petitioners have cheated the defacto complainant by not repaying the loan availed by them; even they threatened the defacto complainant whenever she demanded the money back; since investigation is only at the initial stage, the petition should be dismissed.

6. It is seen from the complaint that the defacto complainant is the



wife of a financier. In the complaint the defacto complainant had stated that she used to lend money to the persons involved in silk yarn business by receiving silk yarn as security. It has been alleged that the second respondent has lent money in the same style to the petitioners also. Having obtained the silk yarn as security, it is up to the second respondent to utilize the silk yarn for realising the loan amount given by her.

7. The complaint would show that the petitioners have pledged their silk yarn with the second respondent as security for obtaining loan. The complaint has been given without producing documents to substantiate the alleged loan to the tune of Rs.49,00,000/-. The complaint on the face of it does not disclose any criminal case. At the worst, it was a kind of loan transaction between the petitioners and the second respondent. The second respondent who is frustrated in getting back the amount has chosen to give a criminal complaint. The petitioners had pledged their silk yarn and that is obviously the security given by them for the loan if any availed from the defacto complainant. The second respondent had stated that the petitioners have also issued cheques for a sum of Rs.5,00,000/- and Rs.50,000/- respectively towards discharge of the loan obtained by them from her. It is



not known whether the cheques have been realised or whether the second respondent had taken any action on dishonour of cheque. Whatever may be the case, the transaction purely appears to be a money transaction for which no criminal colour can be given.

8. Since the second respondent and her husband have been financing the persons dealing with the silk yarn, they have taken the risk of lending money. Without even producing any loan document which could show the terms of the loan, the second respondent had filed a bald complaint and chosen to invoke the criminal proceedings for recovering her dues if any from the petitioners and that cannot be encouraged. In this context it is relevant to refer the judgment of the Hon'ble Supreme Court in the case of ***Parbatbhai Aahir Vs. State of Gujarat [AIR 2017 SC 4843]*** should be present. The relevant portions of the said judgment is extracted hereunder:

“ 15...

(vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned.

(viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.”



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9. Since the civil cause of action has been given with a criminal paint,

I feel the FIR should be quashed in order to meet the ends of justice.

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10. Accordingly, this Criminal Original Petition is allowed and the

FIR in Cr. No.442/2017 on the file of the first respondent is quashed.

Connected miscellaneous petition is closed.

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Index : Yes/No

Speaking Order / Non speaking order

bkn



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To:

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1. The Inspector of Police,
DCB, Tiruvannamalai.
2. The Public Prosecutor,
High Court, Madras.



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R.N.MANJULA, J.,

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