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Crl.O.P.(MD)No.4187 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **13.04.2023**

CORAM:

THE HONOURABLE MRS.JUSTICE **R.THARANI**

Crl.O.P.(MD) No.4187 of 2020
and
Crl.M.P.(MD)No.2304 of 2020

1.Subramanian
2.Sathishkumar ... Petitioners / Accused Nos.1 & 2
Vs.
1.The Inspector of Police,(Crime)
North Police Station,
Rajapalayam, Virudhunagar District
(In Crime No.592 of 2012) ... 1st respondent/complainant
2.Manukumar ... 2nd Respondent/ defacto complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the case in C.C.No.71 of 2019, on the file of the Judicial Magistrate, Rajapalayam and to quash the same insofar as the petitioner is concerned.

For Petitioners : Mr.AN.Ramanathan

For Respondents : Mr.M.Sakthi Kumar
Government Advocate (Crl.Side)for R1

: No appearance for R2



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ORDER

This petition is filed to quash the case in C.C.No.71 of 2019, on the file of the Judicial Magistrate, Rajapalayam.

2.1. The case against the petitioners is that the petitioners 1 and 2 are working in the Madurai Branch of the Kodak Mahindra Bank and that the defacto complainant obtained a vehicle loan to the tune of Rs.9,20,000/- from the Kodak Mahindra Bank for purchasing TATA ACE moving crane. The loan should be paid in 35 monthly installments that commenced from February - 2007 and the Crane chassis No.166372, Engine No.433085460 registered as Registration No.TN-59-AL-9393 was purchased by utilizing the loan. The defacto complainant obtained another loan from I.C.I.C.I. Bank for purchasing another moving Crane with the chassis No.164913 Engine No.543307983 and the same was registered as Registration No.TN-59-AC-3939. There was default in payment of 4 installments, on 17.09.2009, the petitioners along with one Sankar went to Rajapalayam and they seized the vehicle bearing Registration No.TN-59-AL-9393, which was hypothecated in the Bank. After issuing due notice and taken the vehicle to the stockyard at Madurai.



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2.2. On verification it was found that the Engine Number and chassis number are different. On 21.09.2009, the petitioner took the vehicle to the police station and lodged a case in Crime No.553 of 2009, against the defacto complainant and his brother. After completing the investigation, the first respondent police filed a charge sheet in C.C.No. 18 of 2010 on the file of the Judicial Magistrate, Rajapalayam, under Sections 420 and 468 of I.PC against the second respondent and his brother.

2.3. The petitioners filed a petition in App. No.2536 of 2011, before this Court and this Court has granted an order of attachment on 16.02.2012. The defacto complainant filed a petition in App. No.1042 of 2012, before this court to set aside the order made in App. No.2536 of 2011 and that the said petition was allowed on 14.03.2012 with some directions. Aggrieved against the order of the Single Judge, the Bank preferred an Appeal in O.S.A.No.135 of 2012 before the Division Bench of this Court and an order was passed on 20.09.2016 and the order of the Single Judge was set aside.



2.4. On the basis of the order passed in App.No.1042 of 2012, the first respondent registered a case in Crime No.592 of 2012, for offences under Sections 147, 420, 379, 294(b) and 506 (I) of IPC against the petitioner and another person, subsequently, the charge sheet was filed and the same was taken on file as C.C.No.71 of 2019, on the file of the Judicial Magistrate, Rajapalayam and this petition is filed to quash the case in C.C.No.71 of 2019.

3. On the side of the petitioners, it is stated that since the earlier direction of the Single Judge was set aside by the Division Bench, the F.I.R and charge sheet in Crime No.592 of 2012, dated 13.07.2012, based on the order of this Court, in App. No.1042 of 2012, dated 14.03.2012 is to be set aside.

4. On the side of the petitioners, it is further stated that the alleged occurrence took place in the year 2007 and the order of the Single Judge was passed in the year 2012. The charge sheet was filed only in the year 2019, without considering the order of this Court in O.S.A.No.135 of 2012. There was no intention on the part of the petitioners to cheat the defacto complainant. The defacto complainant was the defaulter and an offence under Section 420 of I.P.C. is not made



out. It was the second respondent, who has committed fraud by intentionally changing the registration number of the vehicle and the second respondent is to be prosecuted. There was no recovery from the petitioners and an offence under Section 379 of I.P.C. is not made out.

5. On the side of the petitioners, it is stated that the filthy wordings uttered against the brother of the second respondent was not mentioned in the complaint and there was no statement regarding the usage of filthy wordings in a public place and an offence under Section 294(b) of I.P.C. is not made out. There is no material in the charge sheet to show that the defacto complainant's brother was alarmed due to the life threat and that threat was with an intention and hence Section 506(i) of I.P.C. is not made out. F.I.R. and charge sheet were filed belatedly. The present dispute was only a counter blast against the recovery proceedings, from the Bank.

6. On the side of the prosecution, it is stated that the case was registered only on the directions of this Court. The subsequent order of this Court is wrongly interpreted on the side of the petitioners. The earlier order was not set aside by the Division Bench and the Division Bench has mentioned that no such direction could be issued.



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7. A verification of the records reveals that a counter case was filed against the defacto complainant in Crime No.553 of 2009. It was the petitioners, who approached the police for registering a case against the defacto complainant and the petitioners have voluntarily handed over the vehicle to the police and the case of the petitioners is that the defacto complainant obtained two loans from two different Banks for purchasing two moving Cranes, but, with an intention to defraud the Bank, the defacto complainant changed the number plates of both the vehicles and due to the change in the number plate, the petitioners wrongly seized another vehicle, instead of the hypothecated one. On verification of the Engine number and chassis numbers, the petitioners came to know that there was a mistake and immediately the petitioners lodged a complaint and the vehicle was handed over to the police. Only on the directions of this Court, the case was registered against the petitioners for seizing a wrong vehicle and that order was set aside by the Division Bench.

8. A verification of the records reveals that there was no intention for cheating, since the petitioners have themselves handed over the vehicle to the police and hence, an offence under Section 420 of I.P.C. is not made out.



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9. Specific abusing words were not mentioned in the FIR and the place of occurrence is not a public place and hence, Section 294(b) of I.P.C. is not made out. There is no specific allegation as to the criminal intimidation done by the petitioners. The complaint was given on 03.10.2015, that is, subsequent to the filing of the case in Crime No. 553 of 2009. The allegations were not made out and the complaint is only a counter blast to the case in Crime No.553 of 2009.

10. In the above circumstances, this petition is allowed and the case in C.C.No.71 of 2019 on the file of the Judicial Magistrate, Rajapalayam, is hereby quashed. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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R.THARANI. J.

Ls

To

1. The Judicial Magistrate,
Rajapalayam.
- 2.The Inspector of Police,(Crime)
North Police Station,
Rajapalayam, Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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