



Crl.O.P.(MD)No.4823 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.08.2023

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THE HON'BLE MR.JUSTICE P.DHANABAL

Crl.O.P.(MD)No.4823 of 2020
and
Crl.M.P.(MD)No.2770 & 4400 of 2020

Mariya Selvam

... Petitioner

Vs.

1.The State rep.by
The Inspector of Police,
Theni Police Station,
Theni District.
(Crime No.135 of 2019)

2.Balamurugan

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in S.C.No.13 of 2020 on the file of the Chief Judicial Magistrate, Theni in connection with Crime No.135 of 2019 on the file of the first respondent police and quash the same.



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For Petitioner : Mr.B.Janarth Kumar
For R1 : Mr.M.Sakthi Kumar,
Government Advocate (Crl. Side)
For R2 : Mr.B.Dhanasekaran

ORDER

This Criminal Original Petition has been filed to quash the charge sheet in S.C.No.13 of 2020 pending on the file of the Chief Judicial Magistrate, Theni.

2.According to the petitioner, the prosecution case is that on 13.02.2019, the second respondent has given statement to the first respondent stating that the second respondent's father was migrated from Srilanka and the petitioner's father was also migrated from Srilanka. Due to the said acquaintance, the petitioner has contacted the father of the second respondent and informed that she is having influence at abroad and she has all means to arrange job at France. Based on the said words of the petitioner, the second respondent arranged a sum of Rs.5,47,000/- and handed over to the petitioner. However, the petitioner



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neither arranged the job nor return the money. Thereafter, the second respondent has given complaint dated 11.10.2018 and the same was forwarded to the District Crime Branch, Theni. While pending enquiry, the second respondent received information that same mode of cheating was adopted by the petitioner and the same was received as complaint by the Inspector of Police, Thilagarthidal Police Station, Madurai. Based on the complaint, the petitioner was enquired by the District Crime Branch, at that time, the petitioner had given undertaking that she will settle all the amount on or before the month of November 2018. Thereafter, she failed to repay the amount and thereby, the second respondent has given complaint dated 21.01.2019 before the Superintendent of Police, Theni. On 31.01.2019, the second respondent produced bank transaction to the District Crime Branch, Theni and subsequently, on 07.02.2019, the second respondent gone to Chennai along with Crime Branch police and on 13.02.2019, the second respondent along with one Arivalagan went to DCB, but the petitioner was not turned up. On the said date the second respondent's father asked about the petitioner and he informed the non-appearance of the petitioner and due to the same, the second respondent's father was in frustration and thereafter, the second respondent went to



DCB, Theni and his father was held up in his house. When the second respondent was prepared to return to his home, he received phone call from the neighbor and they informed that his father has committed suicide in front of the Collector's Officer by pouring petrol and thereafter, a case has been registered in Cr.No.135 of 2019 for the offence under Sections 309 IPC altered into 306 IPC. In fact, the petitioner is a foster by profession. Originally the deceased and the father of the petitioner are relatives and the petitioner never canvassed the second respondent for arranging job at abroad. Even according to FIR, there is no specific allegations with regard to the abetment to suicide and there is no averment with regard to the instigation soon before the death of the deceased. Even according to final report and statement of the witnesses, there no iota of evidence to attract offence under Section 306 IPC. That apart, the petitioner has paid entire amount to the second respondent as per direction of this Court issued in the bail petition. Without conducting proper investigation, the first respondent has filed final report for the offence under Section 306 IPC. Even as per the charge sheet, no ingredients to attract 306 IPC. Therefore, the impugned charge sheet is liable to be quashed.



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WEB COPY 3.No counter was filed by the respondents.

4.The learned counsel appearing for the petitioner would contend that the petitioner has been arrayed as accused in this case. He has not committed any offence as alleged in FIR. Even according to the FIR, records, the amount was received from the second respondent and there is no contract between the petitioner and the deceased. As per FIR and final report and other statement of witnesses, no offence under Section 306 IPC is made out and as per final report, due to frustration, the father of the second respondent died. Already complaint was given before the respondent police and they also conducted enquiry. On the date of enquiry, the petitioner was unable to attend the hearings and thereby, due to frustration, the second respondent's father committed suicide and the same will not constitute any offence. Therefore, the pending sessions case is clear abuse of process of law. Further, the petitioner was also settled the amount to the second respondent as per direction given by this Court in the bail petition.



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5.The learned Government Advocate(Crl.side) appearing for the first respondent would contend that the petitioner after obtaining money from the second respondent, failed to arrange job at France. The petitioner already promised the second respondent and obtained money to arrange job in France. After obtaining Rs.5,47,000/- she failed to arrange job and refused to return the money. Therefore, the second respondent preferred complaint and the police also fixed date for enquiry. However, the petitioner was not appeared for the enquiry and thereby, the father of the second respondent committed suicide by pouring petrol. Only due to the conduct of the petitioner, the second respondent's father committed suicide. As per final report there are prima facie materials available as against the petitioner. Though the petitioner has settled the amount to the second respondent, the same is not sufficient to quash the charge sheet, since the petitioner committed serious offence.

6.The learned counsel appearing for the second respondent also reiterated the same arguments of the first respondent.



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WEB COPY 7. Heard both sides and perused the materials available in the records.

8. On perusal of records shows that it is admitted fact that the petitioner obtained money from the second respondent. The deceased is the father of the second respondent. The second respondent gave a complaint before the police station and the police also fixed date for enquiry. But on the date of enquiry, the petitioner was not present and due to the same, the second respondent's father got frustration and committed suicide. There is no direct connection between the deceased and the petitioner with regard to the alleged crime. As per the available records, there is no ingredients to constitute offence under Section 306 IPC as against the petitioner and the petitioner has not induced the deceased to commit suicide and there is no actual participation of this petitioner in committing suicide of the deceased. Further, the petitioner has settled the amount to the second respondent as per direction of this Court in bail petition. It shows the bona-fideness of the petitioner. Since there is no materials to constitute offence under Section 306 IPC, the



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petitioner need not face trial in S.C.No.13 of 2020. Hence, the case in S.C.No.13 of 2020 on the file of the Chief Judicial Magistrate, Theni pending as against the petitioner is liable to be quashed.

9.In the result, this criminal original petition is allowed and the impugned charge sheet in S.C.No.13 of 2020 on the file of the Chief Judicial Magistrate, Theni is hereby quashed. Consequently, connected miscellaneous petitions are closed.

23.08.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Chief Judicial Magistrate,
Theni.
- 2.The Inspector of Police,
Theni Police Station,
Theni District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL,J.

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