



Crl.O.P(MD).No.10983 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 08.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl.O.P(MD).No.10983 of 2020

and

Crl.M.P.(MD)No. 5009 of 2020

1. Dharmaraj

2. Kavin Newton

...Petitioners

Vs

1. The Inspector of Police
District Crime Branch
Kanyakumari District

2. Bibiyana Elsimani

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the records in relating to the First Information Report in Crime No. 5 of 2020 on the file of the first respondent and quash the same.

For Petitioners

: Mr.Eashwar
for Mr.C.Susikumar

For R-1

: Mr.R.M.Anbunithi
Additional Public Prosecutor

For R-2

: Mr.Niranjana S.Kumar



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ORDER

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This Criminal Original Petition has been filed to quash the First Information Report in Crime No.5 of 2020 on the file of the first respondent police.

2. According to the petitioners based on the complaint given by the second respondent the first respondent registered a case in Crime No. 5 of 2020 for the offences under Sections 420 and 506(i) of IPC. The case of the prosecution is that second respondent was employed in Kuwait and now settled in India. While they were working in Kuwait they purchased property in S.No.C-9/10-5 measuring 90.420 cents situated at Puliyurkurichi village, Thakkalai, Kanyakumari District. The above said property which was purchased was leased out to the first petitioner and the first petitioner asked Rs.10,00,000/- from the second respondent for the purpose her daughter's marriage. Accordingly on 15.08.2018 the petitioners said to have borrowed Rs.10,00,000/- from the second respondent by assuring that they will repay the amount within two months by selling their vacant site. In spite of repeated demand made by the second respondent the petitioners have not paid the above said amount and thereby on 17.06.2019 the second respondent and her husband requested the petitioners to pay the said amount for that the petitioners said to have threatened the second respondent with dire consequences. These are all false allegations.



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2.1. Infact the first petitioner is running a nursery garden for the past 19 years . The wife of the first petitioner entered into a lease agreement with the second respondent for a period of three years and as per the terms and conditions the first petitioner has paid Rs.7000/- rent per month. Thereafter the first petitioner made modification in the property by spending expenses of Rs.24,39,600/-with the permission of the second respondent and invested sum of Rs.80,00,000/- in the nursery garden by obtaining proper license from the Government. Thereafter periodically license was renewed upto 05.08.2019. In the meantime the rent was increased by the second respondent and the same was also regularly paid by the petitioners. Whiles due to misunderstanding between the parties the second respondent insisted the first petitioner to vacate the property prior to the lapse of lease period. Hence the petitioners filed a suit in O.S. No.87 of 2019 on the file of the District Munsif Court, Padmanabhapuram and the same is pending. Whiles the second respondent came forward with the false complaint stating that the petitioners borrowed a sum of Rs.10 lakhs. There are civil dispute between the parties. Even in the First Information Report the second respondent stated that already the first complaint was lodged on 18.06.2019 and the same was closed. Even as per the averment of the First Information Report the offences under Sections 420 and 506(i) of IPC would not attract and the petitioner have no intention to cheat the second respondent from the inception and



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mere words are not sufficient to constitute the offence under Section 506(i) of IPC that too through phone. Therefore the pending First Information Report is abuse of process of law and hence it is liable to be quashed.

3. No counter was filed by the respondents.

4. The learned counsel for the petitioners would contend that there is a civil dispute pending between the first petitioner and the second respondent with regard to vacating the premises and the first petitioner being a lessee is enjoying the property and there is a dispute between them in vacating the property and thereby the petitioners filed a suit in O.S. No.87 of 2019 on the file of the Principal District Munsif Court, Padmanabhapuram. In order to wreck vengeance for the above said civil suit the present complaint has been lodged with bald allegations and even according to the First Information Report mere threat as alleged by the petitioners alone is not sufficient to attract the offence under Section 506(i) of IPC. Therefore in order to settle civil dispute the present complaint has been lodged and the same is clear abuse of process of law. To support his contention he relied on the order of this Court in the case of Suthakar and another .vs. the Inspector of Police and another reported in (2022) 2 MLJ (Crl.)453



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5. The learned counsel appearing for the second respondent would contend that these petitioners borrowed money for a sum of Rs. 10 lakhs and thereafter failed to repay the same and when the same was questioned by the second respondent he abused and also threatened with dire consequences over phone. Thereafter the second respondent gave complaint before the first respondent police and they also registered First Information Report. Already voice recordings were sent to Regional Forensic Laboratory and the same also revealed that the petitioners threatened the defacto complainant and hence the petitioners have to face the trial. To support his contention he relied on the following judgments:

a) Rajeev kourav .vs. Baisahab and others in Criminal AppealNo. 232 of 2022

b)Sanjeet Jaiswal.vs. State of Uttar Pradesh and others reported in 2022 Livelaw (SC) 594.

c)Shaalini and other.vs. State reported in 2021(3) MWN(Cr.)517

6. Heard both sides and perused the materials available on record.



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7. On perusal of the record it is observed that already civil dispute is pending between the parties with regard to vacating the premises and civil dispute is also pending between the parties. In the meantime this complaint has been lodged by the defacto complainant alleging that the petitioners borrowed a sum of Rs.10,00,000/-and the same was not returned by the petitioners. When the same was questioned by the defacto complainant the petitioners herein threatened over phone. Since there are civil dispute pending between the parties in respect of land and borrowal of money and repayment of money are all civil in nature. Hence the second respondent can seek remedy through civil Court for recovery of money. In so far as offence under Section 420 of IPC is concerned there is no averments that the petitioners had intention to cheat the second respondent from the inception and since there is a dispute pending between the parties with regard to vacating the premises for money dispute, offence under Section 420 of IPC will not attract. In so far as offence under Section 506(i) of IPC is concerned the allegation is bald allegation and mere uttering of words over phone is not sufficient to constitute the offence and the averments are that they would fire the second respondent and her husband. Those words alone are not sufficient to constitute the offence under Section 506(i) of IPC. Therefore based on the above said vague allegations the petitioners need not face the ordeal of trial, hence the pending First



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Information Report in Crime No. 05 of 2020 on the file of the first respondent is liable to be quashed.

8. The learned counsel appearing for the petitioner relied on the order of this Court in the case of ***Suthakar and another .vs. the Inspector of Police and another*** reported in ***(2022) 2 MLJ (Crl.)453***, wherein it is held as follows:

9. The condition necessary for an act to constitute an offence under Section 415 of IPC is that there was dishonest inducement by the accused. Cheating is an essential ingredient to an offence under Section 420 of IPC. The prosecution has to show that the accused was having dishonest intention even from the very beginning of the transaction.

10. Regarding the offence under Section 294(b) IPC, it is settled law that mere utterance of abusive/obscene words are not sufficient, but there must be a further proof to show that the same caused annoyance to the others. As rightly contented by the learned counsel for the petitioners, the second respondent has not even alleged that the incident was occurred at the public place and that the uttering of abusing words by the petitioners caused annoyance to the others.

.....

14. In the present case, as rightly contented by the learned counsel for the petitioners, there is no allegation of entrustment of property. Moreover, it is not sufficient enough to show that the money has been retained by the accused, and the prosecution has to show that the accused dishonestly disposed of the same in some way or dishonestly retained the same. Even assuming for the sake of arguments that the accused are liable to pay the balance amount, as alleged by the second respondent, the same would not amount to criminal breach of trust. Even, if the averments in the complaint are



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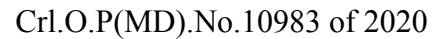
taken as true, the basic ingredients for dishonest, mis-appropriation and cheating and for dishonest intention of inducement are not made out.

15. As rightly contented by the learned counsel for the petitioners, the second respondent, by lodging the above complaint, has been attempting to convert the civil dispute into a criminal dispute. Hence, this Court is of the view that the complaint lodged by the second respondent constitutes an abuse of process of law and the same is liable to be quashed.

9. On a careful reading of the above said judgment it is clear that the complaint lodged by the complainant should contain basic ingredient to constitute the offence and attempt to convert the civil dispute into criminal dispute through a complaint is abuse of process of law and false complaint is liable to be quashed. In the case on hand also there is no specific allegations to constitute the offence under Sections 420 and 506(ii) of IPC and the defacto complainant attempting to convert the civil dispute into criminal dispute and filed the complaint and thereby the said case law is squarely applicable to the present facts of the case.

10. The learned counsel appearing for the second respondent relied on the following decisions:

a) Rajeev kourav .vs. Baisahab and others in Criminal Appeal No. 232 of 2022, wherein it is held as follows:



7. Having gone through the impugned judgment and order passed by the High Court by which the High Court has set aside the criminal proceedings in exercise of powers under Section 482 Cr.P.C., it appears that the High Court has virtually conducted a mini trial, which as such is not permissible at this stage and while deciding the application under Section 482 Cr.P.C. As observed and held by this Court in a catena of decisions no mini trial can be conducted by the High Court in exercise of powers under Section 482 Cr.P.C. jurisdiction and at the stage of deciding the application under Section 482 Cr.P.C., the High Court cannot get into appreciation of evidence of the particular case being considered. (See *Pratima (supra)*; *Thom (supra)*; *Rajiv (supra)* and *Niharika (supra)*). 7.1 Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and the manner in which the High Court has allowed the petition under Section 482 Cr.P.C., we are of the opinion that the impugned judgment and order passed by the High Court quashing the criminal proceedings is unsustainable. The High Court has exceeded in its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 Cr.P.C. 7.2 It is also required to be noted that even the High Court itself has opined that the allegations are very serious and it requires further investigation and that is why the High Court has directed



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to conduct the investigation by CB-CID with respect to the FIR No.227 of 2019. However, while directing the CB-CID to conduct further investigation/investigation, the High Court has restricted the scope of investigation. The High Court has not appreciated and considered the fact that both the FIRs namely FIR Nos.260 of 2018 and 227 of 2019 can be said to be interconnected and the allegations of a larger conspiracy are required to be investigated. It is alleged that the overall allegations are disappearance of the trucks transporting the beer/contraband goods which are subject to the rules and regulations of the Excise Department and Excise Law.

c)Shaalini and other.vs. State reported in 2021(3) MWN(Cr.)517, wherein it is held as follows:

It is well settled law that, whether or not the materials unearthed by the prosecution would prove the allegations made against the accused, cannot be decided by this Court, while exercising jurisdiction under Section 482 Cr.P.C. The allegations leveled against the accused are required to be proved or disproved before the Court of Law. The general proposition that, Page 6 of 12 <https://www.mhc.tn.gov.in/judis> Crl.O.P.No.7256 of 2017 the materials collected would not constitute any offence and therefore, entire final report can be quashed, cannot be applied mechanically in all cases. Every case has to be seen on its own facts and circumstances.

11. On a careful reading of the above said judgements it is clear that if *prima facie* materials available then the case cannot be quashed and whether or not materials unearthed by the prosecution would prove the allegations made against the accused cannot be decided by the Court while exercising jurisdiction under Section 482 of Cr.P.C. In the case on hand no *prima facie* materials available and the complainant attempting to convert the civil dispute into criminal



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dispute thereby the said case laws will not be applicable to the present facts of the case.

12. In view of the above discussions and considering the facts and circumstances of the case, this Criminal Original Petition stands allowed and the First Information Report in Crime No.5 of 2020 on the file of the first respondent is hereby quashed. Consequently connected miscellaneous petition is closed.

08.09.2023

Index : Yes / No
Internet : Yes / No
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To

1. The Inspector of Police
District Crime Branch
Kanyakumari District
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL, J.

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