BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl.O.P(MD).No.10086 of 2019
and
Crl.M.P.(MD)Nos.6363 and 6364 of 2019

1.Karthikeyan
2.Chandrasekar @ Chandru
3.Viji
4.Murugan ...Petitioners

Vs

1.The Inspector of Police,
Thirunagar Police Station,
Madurai.
2.Ganeshwari ...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 in C.C.No.284 of 2018 on the file of the learned Judicial Magistrate No.VI, Madurai and quash the same as against the petitioners.

For Petitioners	: Mr.S.Thirupathy
For 1st Respondent	: Mr.R.M.Anbunithi Additional Public Prosecutor
For 2nd Respondent	: No Appearance

ORDER

This petition is filed to quash the charge sheet in C.C.No.284 of 2018 on the file of the learned Judicial Magistrate No.VI, Madurai.

2.According to the petitioners, the first respondent has filed a charge sheet in C.C.No.284 of 2018 for the offence under Section 294(b) and 506(i) of IPC and Sections 3 and 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 before the learned Judicial Magistrate No.VI, Madurai as against the petitioners and five others. The prosecution case is that the second respondent/complainant working as a Government school teacher at Vedarpuliyankulam and she borrowed a loan from the petitioners and five others for her family expenses and for her children's education. The petitioners and five others demanded more interest and uttered filthy language and caused criminal intimidation to the second respondent. As per the charge sheet, a sum of Rs.22.40 lakhs is involved and she has also issued bank cheques and pro notes.

3.It is stated that the first petitioner is working in Tamil Nadu Transport Corporation and the second petitioner is working as a Labourer in a private shop and the petitioners 3 and 4 are farmers. All the petitioners are not doing money lending business. Hence, the offence under Sections 3 and 4 of Tamil

Nadu Prohibition of Charging Exorbitant Interest Act will not attract. Further as per the averments made in the FIR, no offence under Sections 294(b) and 506(i) of IPC will attract. Already proceedings under Section 138 of Negotiable Instruments Act is initiated against the second respondent. Therefore, in order to harass the petitioners, the second respondent has filed the complaint and registered the FIR. Without proper investigation, the first respondent has filed the final report. Hence, the impugned charge sheet is liable to be quashed.

4.The learned counsel appearing for the petitioners would contend that the second respondent herself admitted that she borrowed money from the petitioners and others for more than Rs.10,000/- through cheques and pro notes. The petitioners are not involved in money lending business. Therefore, the offence under Sections 3 and 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act will not attract. Even according to the complaint and the charge sheet, there is no ingredients to attract the provisions under Sections 294(b), 506(i) of IPC. Hence, in order to harass the petitioners, the second respondent has filed this frivolous complaint. The respondent police without proper investigation, have filed a final report.

5.The learned counsel appearing for the petitioners has placed reliance on the following judgments of this Court:-

(I)*Crl.O.P.(MD)No.30923 of 2023 in the case of* ***N.Ramamurthy and another v. V.M.Chandrasekaran****;*

(ii)*Crl.O.P.(MD)No.648 of 2019 in the case of* ***M.Sudha v. The State****;*

(iii)*Crl.O.P.(MD)No.4877 of 2018* in the case of ***T.Karthikeyan and others v. The State rep. by its Inspector of Police;***

6.The learned Additional Public Prosecutor appearing for the first respondent represented that the petitioners charged exorbitant interest and also obtained documents from the second respondent and also caused criminal intimidation and abused with filthy language as against the second respondent and thereby, the second respondent gave a complaint before the first respondent police and the police also registered the FIR. According to investigation, the offence is made out and thereby, a final report has been filed and the same is also pending. Hence, this petition is liable to be dismissed.

7.There is no representation on the side of the second respondent and the respondents have not filed any counter.

8.Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the first respondent and perused the materials available on record.

9.Main contention of the petitioners is that the petitioners are not money lenders and the second respondent borrowed money on executing negotiable instrument for more than Rs.10,000/-, thereby, offence under Sections 3 and 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act will not attract. In order to attract the provisions of Sections 294(b) and 506(ii) of IPC, no averments in the complaint and FIR. Therefore, the petitioner need not face the trial on the said charge sheet. To support of his contention, he relied on the following judgment.

10.The learned counsel appearing for the petitioner has placed reliance on the judgment of this Court in the case of ***T.Karthikeyan and others v. The State Rep. by its Inspector of Police in Crl.O.P.No.4877 of 2018 dated 26.06.2018***, which reads as follows:

> *“ 10.The object of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, is to prohibit the charging of exorbitant interest by any person and matters incidental thereto. The scheme of the Act is to regulate and control collection of money in the name of daily vatti, hours vatti, kandhu vatti, meter*

vatti, thandal etc. As per the provisions of the Tamil Nadu Money Lenders Act, 1957, a money lender is a person whose main or subsidiary occupation is the business of advancing and realising loans. Further, an advance made on basis of a negotiable instrument exceeding Rs.10,000/-, will not fall under the definition of a loan. Therefore, a money lender, who makes an advance, on basis of a negotiable instrument exceeding Rs. 10,000/- is not a person referred to under Section 3 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003. In other words, the debtor cannot lawfully complain of a demand of exorbitant interest, when a money lender advances a loan on the basis of negotiable instrument exceeding Rs.10,000/-.

11.As per the provisions of the Tamil Nadu Money Lenders Act, a money lender is a person, whose main or subsidiary occupation is a business of advancing and releasing loan. In the instant case, the petitioners main occupation was transport business and it is nobody's case that their main and subsidiary business was money lending. Therefore, the term 'person' referred to in Section 3 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 and the term 'money lender' referred to therein are not applicable to the petitioners herein. Incidentally, the petitioners herein had produced various copies of their transport business pertaining to Port Trust Licence, Coir Board License, Export and Import License, Income Tax Returns etc., and established that their main business was not money lending. As such, the FIR implicating the petitioners for offences under Sections 3 and 4 of Tamil Nadu Prohibition of Charging

Exorbitant Interest Act, 2003 is prima facie not made out."

11.This Court has elaborately discussed about the applicability of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act and held that an advance made on the basis of the Negotiable Instruments exceeding Rs. 10,000/- will not fall under the definition of a loan. Therefore, a money lender who makes an advance on basis of a Negotiable instruments exceeding Rs. 10,000/- is not a person referred to under Section 3 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act. In other words, the debtor cannot lawfull complain of a demand of exorbitant interest, when a money lender advances a loan on the basis of negotiable instrument exceeding Rs.10,000/-. In the present case also, the second respondent herself admitted that she borrowed money from the petitioners for more than Rs.10,000/- through negotiable instruments. Hence, Sections 3 and 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act would not be attract.

12.Further this Court has perused the FIR as well as final report filed by the first respondent. On careful perusal of those documents, they reveal that there is no specific word mentioned by the petitioners to attract the provisions under Section 294(b) of IPC. As far as Section 506(i) of IPC is concerned, there is no specific overt act or specific averments to attract the provisions of

Section 506(i) of IPC, the averments made in the complaint are not specific but vague.

13.There is no averments in the complaint to attract the provisions of Sections 294(b) and 506(i) of IPC. Further there are so many proceedings under Section 138 Negotiable Instruments are also pending.

14.In view of the above discussions, it is clear that this case is an abuse of process of law and the petitioners need not face the trial based on the averments made in the charge sheet. Therefore, the charge sheet is liable to be quashed.

15.Accordingly, this Criminal Original Petition is allowed and the charge sheet in C.C.No.284 of 2018 on the file of the learned Judicial Magistrate No.VI, Madurai is hereby quashed. Consequently, connected miscellaneous petition are allowed.

06.07.2023

NCC : Yes/No
Internet : Yes/No
Index : Yes/No
Mrn

To

1.The Inspector of Police,
Thirunagar Police Station,
Madurai.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

P. DHANABAL,J.

Mrn

Crl.O.P(MD).No.10086 of 2019

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