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Crl.O.P.(MD) No.10200 of 2019



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.02.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **G.ILANGO VAN**

Crl.O.P.(MD) No.10200 of 2019
and Crl.M.P.(MD).Nos.6427 & 6428 of 2019

1.Musthafa

2.Mahendran

... Petitioners

Vs.

1.The State represented through the
Inspector of Police,
Sessions Court Police Station,
Trichy City.

... 1st Respondent/Complainant

2.Gurunatha Prabu

... 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 impugned charge sheet in C.C.No.1183 of 2019 on the file of the learned Judicial Magistrate No.II, Trichy and quash the same as illegal.

For Petitioners : Mr.S.M.A.Jinnah

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

For R2 : Mrs.P.Kalaiyarasi Bharathi

ORDER

This Criminal Original Petition has been filed seeking to quash the



impugned charge sheet in C.C.No.1183 of 2019 on the file of the learned Judicial Magistrate No.II, Trichy.

2.The facts in brief:

The defacto complainant lodged a complaint stating that he took steps for getting Guardianship order from the Court for his two minor children for the purpose of raising money to meet out the Medical expenses of his deceased wife. Therefore, he approached one Mr.Sivashankaran Advocate. At that time, the accused No.1 namely Mustafa made enquiry with him, stating that he was the advocate clerk of the Advocate Mr.Sivashankaran and at present, Advocate went abroad and he will return back only after some time. He promised him that he will obtain the certificate in a short time and introduced another Advocate namely Mr.Mahendran the second accused. The above said Mahendran also promised that he can get the certificate in short time and for that purpose, he required Rs.8,50,000/-. They obtained his signatures in several papers and so also from his elder daughter. They received Rs. 3,00,000/-. Again they received Rs.3,00,000/- in cash. On 05.06.2015, the balance amount of Rs.2,00,000/- was also paid to Mustafa and Mahendran. Thereafter, again they demanded Rs.3,00,000/-. He expressed his inability. However, they demanded Rs.50,000/-. He sent the



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money through net banking to Mustafa and Mahendran and thereafter, there was no communication from them. They dragged the matter. They also avoided his telephone calls. After he stated that he is going to give a police complaint, finally an order was sent to his e-mail ID, wherein, he found that it was dismissed. When he enquired about the money, he was criminally intimidated and abused. With the above said allegations, he filed the complaint. After the investigation was over, the final report was filed before the learned Judicial Magistrate No.II, Trichy and the same was taken cognizance in C.C.No.1183 of 2019. Seeking quashment of the same, this petition has been filed by both the accused.

3.Heard both sides.

4.The learned counsel for the petitioner would submit that actually on behalf of the petitioner one Mr.T.Swaminathan, Advocate filed H.M.G.O.P.No.1 of 2015, before the I Additional District Judge, Trichy, and that was dismissed and that order was also received by the complainant. Reading of the order shows that the complainant was also examined as PW1 and marked several documents. At the conclusion of the enquiry it was dismissed on merits. So it has been submitted by the petitioner that it is absolutely false complaint, even without disclosing



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the name of the advocate who was appearing for the complainant and as well as the fact of giving evidence. So the question which arises for consideration is whether there is any *prima facie* materials collected during the course of investigation to proceed against these petitioners.

5.No doubt that there is confusion with regard to the appointment of advocate by the complainant. In the complaint, it has been stated that his signature has been obtained in several papers, apart from that the signature of his elder daughter. The above said order was passed on 10.08.2015, whereas the complaint was given on 16.03.2016, much after the dismissal of the petition. But, the complainant was very particular and clear in his complaint and as well as the statement recorded during the course of investigation that these petitioners posing themselves as advocate clerk and advocate, received totally Rs.8,50,000/- for the purpose of filing the case and getting the order copy etc.,

6.As I mentioned earlier, whether Mr.T.Swaminathan was appointed by the complainant on his behalf, is a matter for consideration in the trial process and whether these petitioners by misusing the signatures obtained has engaged the above said Mr.T.Swaminathan to file the case are all matter for consideration during the trial. But list of



witnesses does not include the above said Mr.T.Swaminathan, who filed the petition on behalf of the defacto complainant, as one of the witnesses.

In the course of trial, to find out the truth, the trial court is at liberty to summon the above said advocate. Such a course is available. Only his examination will bring out the truth. But from the materials collected during the course of investigation, it is seen that money was also transferred in the name of accused persons, For what purpose, the above said money was transferred is a matter for consideration in the trial.

7.The complaint is disclosing serious state of affairs prevailing around Trichy. So the trial must be undertaken to its logical conclusion. I find absolutely no merits in this petition and the petition deserves no consideration at all, in the light of the above said serious allegations.

8.Since the matter is of the year 2019, there shall be a direction to the learned Judicial Magistrate No.II, Trichy, to expedite the trial process in C.C.No.1183 of 2019, on his file, and conclude the same, within a period of **five (5)** months from the date of receipt of a copy of this order.

9.With the above directions, this criminal original petition is **dismissed**. Consequently, connected miscellaneous petitions are closed.



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Index : Yes/No
Internet : Yes/No
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To

- 1.The Judicial Magistrate No.II, Trichy.
- 2.The Inspector of Police,
Sessions Court Police Station,
Trichy City.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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