



Crl.O.P(MD).No.13937 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 28.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl.O.P(MD).No.13937 of 2020

and

Crl.M.P.(MD)Nos.6389 and 6390 of 2020

1.V.Krishnan

2.K.Parvathi

...Petitioners

Vs

1.State through the,
Inspector of Police,
Tirunelveli Town Police Station,
Tirunelveli City.
In Crime No.136 of 2019

2.Murugan

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the records pertaining to the charge sheet in S.C.No.178 of 2021 for an alleged offence under Sections 294(b), 506(ii) and 306 of IPC and under Section 4 of Tamil nadu Prohibition of Charging Exorbitant Interest Act, 2003 on the file of the learned Additional Assistant Sessions Judge, Tirunelveli and quash the same as illegal against the petitioners.

For Petitioners

: Mr.M.Maran

For 1st Respondent

: Mr.M.Sakthi Kumar

Government Advocate (Crl. Side)

For 2nd Respondent

: Mr.M.S.Jeyakarthick



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ORDER

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This petition is filed to quash charge sheet in S.C.No.178 of 2021, on the file of the learned Additional Assistant Sessions Judge, Tirunelveli.

2.According to the petitioners, the second respondent had given complaint before the first respondent and thereafter, FIR in Crime No.136 of 2019 was registered by the first respondent for the offence under Sections 294(b), 506(ii), 306 of IPC and Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act. Thereafter, the first respondent investigated the case and filed final report before the learned Judicial Magistrate No.IV, Tirunelveli and the same was taken as P.R.C.No.34 of 2022 and then committed to the Principal Sessions Court and then the case was made over to the learned Additional Assistant Sessions Judge, Tirunelveli in S.C.No.178 of 2021.

3.According to the prosecution case, on 21.04.2019 at about 02.00 p.m., when the defacto complainant and witness no.3 namely Thavasudurai were talking with the deceased Appadurai at Town North Mount Road, near Bus stop place and at the time, A1 came to that place and he shouted the deceased in filthy language and also threatened him if you did not repay the principal and



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interest, he would face dire consequences. The defacto complainant and witness no.3 shouted the first petitioner and he left from the place. Thereafter, the defacto complainant asked his son deceased about the A1 and he told that he borrowed a sum of Rs.2,50,000/- at the rate of 5% and he paid Rs.12,500/- per month. But for last three months, he was unable to repay the interest and in the meantime, the petitioners demanded Rs.10,00,000/- from him. Due to mental torture, on 23.04.2019, at around 03.00 p.m., the deceased consumed poison. While taking treatment, on 29.04.2019, at about 04.00 a.m., he died.

4.In fact the petitioners had not committed any offence and no any occurrence was happened as alleged by the defacto complainant. The son of the defacto complainant is well known to the first petitioner and he borrowed Rs.5,00,000/- from the first petitioner and he also paid the said Rs.5,00,000/- and the deceased issued post dated cheque bearing no.935794 dated 22.02.2019. The first petitioner presented the cheque through his banker I.e. Tamil Nadu Mercantile Bank but the said cheque was returned as 'insufficient fund'. On 23.06.2019, the petitioners issued a legal notice to the deceased through his counsel and the same was received by the deceased on 28.03.2019. But the deceased failed to repay the amount so far. On 23.04.2019, the first petitioner filed a petition before the Court under Section 138 Negotiable Instruments Act. Thereafter, the defacto complainant lodged



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this complaint against the petitioners with malafide intention. Thereby, the charge sheet against the petitioners is liable to be quashed.

5.The second respondent filed counter stating that the son of the second respondent worked in Saravana Bhava Hotel in Tirunelveli and he stayed in the upstairs of the above said hotel. On 21.04.2019 at about 02.00 p.m., when he and his son-in-law were speaking with his son in the bus stand, A1 came to the occurrence place and abused his son by using filthy language and also warned his son that unless he returned loan amount along with its interest within next day, he would kill his son. When the same was enquired with his son, he informed that he borrowed a sum of Rs.2,50,000- and he paid Rs. 12,500/- as monthly interest to A1. For the past three months, he could not repay the monthly due. Thereby, A1 and his wife threatened his son to pay the exorbitant interest. More over the accused caused threat to pay a sum of Rs. 10,00,000/-. While so, on 23.04.2019 at about 04.25 p.m., his son's colleague namely Mani @ Madasamy informed him that his son was admitted in Tirunelveli hospital and thereafter, he and his son-in-law went to the hospital and he saw his son. While the son of the petitioner was taking treatment in ICU, when he enquired with his son's co-worker namely Mariappan, he informed him that his son consumed pesticide and he was admitted in the hospital and later on 29.04.2019, the son of the second respondent died. On



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25.04.2019 the defacto complainant gave a complaint before the Police station

and based on the complaint, the first respondent registered a case in Crime No.

136 of 2019 for the offence under Sections 294(b), 506(ii) of IPC and Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act. After the death of second respondent's son, Section 306 of IPC is also included in the charge sheet. Further in order to get more amount as interest, A1 misused the cheque and filed a petition under Section 138 of Negotiable Instruments Act against him. Two days prior to the death of his son, A1 developed quarrel with his son and his son died due to the harassment made by the petitioners by demanding exorbitant interest. Therefore the accused are not reserved to get relief in the present petition.

6.The learned counsel appearing for the petitioners would contend that the second respondent had given a false complaint before the first respondent and the first respondent registered FIR in Crime No.136 of 2019 for the offence under Sections 294(b), 506(ii) and Section 4 Tamil Nadu Prohibition of Charging Exorbitant Interest Act and Section 306 of IPC and the same is pending before the learned Additional Assistant Sessions Judge, Tirunelveli in S.C.No.178 of 2021. In fact the deceased borrowed a sum of Rs.5,00,000/- from the first petitioner on 22.01.2019 and thereafter, on 22.02.2019, the deceased issued a post dated cheque in favour of the first petitioner bearing



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no.935794 and the same was presented for collection and the cheque was returned. Thereafter, on 26.03.2019, the first respondent issued legal notice through his counsel and the same was received by the deceased on 28.03.2019. The deceased failed to repay the said amount. So knowing that the first petitioner has presented the cheque complaint, the father of the deceased filed this complaint on 25.04.2019. Thereafter, Section was altered with 306 of IPC. In order to escape from the aforesaid cheque case and in order to wreck vengeance, the present complaint has been filed by the father of the deceased with false allegations. Therefore, the charge sheet as against the petitioners is liable to be quashed.

7.To support of his contention, he relied upon the following judgments:

(i)Amalendu Pal @ Jhantu v. State of West Bengal reported in (2010) 1 SCC 707.

(ii)P.Venkadesan v. State in Crl.A.No.68 of 2019.

8.The learned Government Advocate appearing for the first respondent contended that based on the complaint given by the second respondent, the first respondent have registered a FIR and after elaborate investigation, the first respondent filed final report and the same was taken on file by the learned Judicial Magistrate No.IV, Tirunelveli and taken on file as P.R.C.No.34 of



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2020. Thereafter, the case was committed to Principal Sessions Judge and the learned Principal Sessions Judge made over the case to the Additional Assistant Sessions Court, Tirunelveli and now the case is pending in S.C.No. 178 of 2021. In this case, the offences are serious in nature. The case has been elaborately investigated and as per investigation, *prima facie* materials available as against the petitioners to proceed against them and thereby, the Sessions Court has taken cognizance and is pending in S.C.No.178 of 2021. Therefore, at this stage, the petition is liable to be dismissed.

9.The learned counsel appearing for the second respondent would contend that petitioners charged exorbitant interest from the second respondent's son and harassed his son by demanding more interest. Thereafter, on 21.04.2019, the petitioners abused the son of the defacto complainant with filthy language and threatened to pay the huge amount of interest and thereafter on 23.04.2019, the son of the second respondent consumed poison and admitted in the hospital and thereafter the second respondent gave complaint before the respondent police on 25.04.2019 and the first respondent registered FIR in Crime No.136 of 2019 Sections 294(b), 506(ii) of IPC and Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act. Later the second respondent's son died in the hospital and thereafter, the respondent police have altered the Section by including 306 of IPC. Then,



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filed final report as against the petitioners and now the case is pending before the Additional Assistant Sessions Court in S.C.No.178 of 2020. At this stage, the petitioners have to face the trial and the offences are grave in nature. Hence, this petition is liable to be dismissed.

10.This Court heard both sides and perused the materials available on records.

11.On perusal of records, it is admitted fact that the deceased borrowed money from A1 and he filed cheque case before the Judicial Magistrate No.IV Court, Tirunelveli. The petitioners' contention is that in order to escape from the aforesaid cheque case, the complaint was given as against the petitioners with false allegations.

12.According to the second respondent, the first petitioner gave a sum of Rs.2,50,000/- to his son and charged exorbitant interest and his son paid a sum of Rs.12,500/- per month as interest and there was due of three months interest and thereby, on 21.04.2019, A1 abused the deceased in filthy language and demanded amount by claiming exorbitant interest. Thereafter, the second respondent's son consumed poison on 23.04.2019. Then the second respondent gave a complaint to the respondent police and the first respondent



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registered a FIR in Crime No.136 of 2019 for the offence under Sections 294(b), 506(ii) of IPC and Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act. Thereafter, the son of the second respondent died on 29.04.2019 in the hospital. Hence, Section was altered by including Section 306 of IPC. The first respondent investigated the case and filed final report. As per the final report, there are *prima facie* materials available and the learned Judicial Magistrate No.IV, Tirunelveli also numbered the case as P.R.C.No.34 of 2020 and committed the case to the Principal Sessions Court and the learned Principal Sessions Judge made over the case to the learned Additional Assistant Sessions Judge, Tirunelveli and the case is now pending in S.C.No.178 of 2019. The offences charged against the petitioners are grave in nature and the case requires a trial. Thereby at this stage, this Court need not interfere with the cognizance taken by the learned Additional Assistant Sessions Judge, Tirunelveli and there is no ground to quash the charge sheet.

13.The learned counsel appearing for the petitioners relied upon the judgment of the Hon'ble Supreme Court in the case of ***Amalendu Pal @ Jhantu v. State of West Bengal*** reported in ***(2010) 1 SCC 707***, wherein the Hon'ble Supreme Court in para nos.15 and 16 reads as follows:-

*“15. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under **Section***



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306 IPC, the Court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without their being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of [Section 306 IPC](#) is not sustainable.

16. In order to bring a case within the purview of [Section 306](#) of IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under [Section 306 IPC](#).”

14. The learned counsel appearing for the petitioners relied upon the judgment of this Court in the case of ***P.Venkadesan v. State*** reported in ***Crl.A.No.68 of 2019***, wherein this Court in para nos.11 and 12 reads as

follows:-

<https://www.mhc.tn.gov.in/judis>



“11. Admittedly there is civil dispute pending between the appellant and deceased and her husband P.W.1. From the oral and documentary evidence produced by the prosecution, this Court finds that except the fact that the appellant filed a suit against the deceased, no mens rea on the part of the appellant. To convict a person for the offence under Section 306 IPC, prosecution has to prove the fact that as no other option, the deceased has driven to take away her life and in this case, it is seen that the appellant filed the suit against the deceased and given some trouble regarding the disputed property. If at all the appellant has given trouble to the deceased, she has to face the same in the manner known to law before the Civil Court in the civil proceedings pending between them and for this reason, one should not go to the extreme level taking away the life. Evidence of P.W.1 itself clear that he advised the deceased to manage the trouble alleged to have given by the appellant.

12. This Court finds that prosecution has failed to prove the ingredient of Section 306 against the appellant. The deceased, instead of resolving her dispute before the Civil Court, given weight to her frustration and hence it will be difficult to penalize the appellant under Section 306 of IPC. Hence, this Court is of the considered view that the appellant is entitled to acquittal extending the benefits of doubt.”

15. On careful reading of the above judgments, it is clear that in order to attract the offence under Section 306 of IPC, there must be positive action



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proximate to time of occurrence on the part of the accused which led or compelled the person to commit suicide. Further the prosecution has to prove the fact as no other option, the deceased has driven to take away her life. In the case on hand, the case is at trial stage and as per investigation, *prima facie* materials available to proceed with the case and the accused are not only charged for the offence under Section 306 of IPC but also charged for some other offence and this case requires trial and thereby, the aforesaid case laws will not be applicable to the present facts of the case.

16. Therefore, as discussed above, this petition has no merits and deserves to be dismissed. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

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

- 1.The Additional Assistant Sessions Judge, Tirunelveli.
- 2.The Inspector of Police,
Tirunelveli Town Police Station,
Tirunelveli City.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL,J.

Mrn

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