



Crl.O.P.(MD)No.15328 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 12.09.2023

CORAM :

THE HONOURABLE **Mr. JUSTICE P.DHANABAL**

Crl.O.P.(MD)No.15328 of 2020
and
Crl.M.P.(MD)No.7431 of 2020

1.P.Kokila

2.N.Perumal

... Petitioners

Vs.

1.State through
The Sub Inspector of Police,
Srivilliputtur,
Virudhunagar District.
(Cr.No.56 of 2020)

2.Rukshana Farbin

... Respondents

Prayer : Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to call for the records pertaining to FIR in Crime No.56 of 2020 on the file of the first respondent police and quash the same by allowing this criminal original petition.

For Petitioner : Mr.M.Thirunavukkarasu

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

For R2 : No Appearance



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ORDER

This criminal original petition has been filed to quash the first information report in Crime No.56 of 2020 on the file of the first respondent police.

2.According to the petitioners, based on the complaint given by the second respondent, which was originally preferred before the learned Judicial Magistrate, Srivilliputtur and thereafter, forwarded to the first respondent, the first respondent registered FIR in Cr.No.56 of 2020 for the offence under Sections 294(b), 406, 506(ii) IPC r/w Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998 and Section 4 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act. The prosecution case is that on 21.07.2019, at about 09.00 pm., the petitioners and along with other unknown persons came to the house of the defacto complainant abused her in filthy language and also threatened her to settle the amount of Rs.3,50,000/- with interest or vacate the house. The second petitioner herein choked her and pushed away her and further, they demanded exorbitant interest. The petitioners have retained the pro-notes and documents and failed to hand over the same to the defacto complainant and also threatened her with dire consequences. With the above said allegations, the complaint was lodged. In fact, the defacto complainant and



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her husband borrowed a sum of Rs.3,00,000/- by executing 2 pro-notes dated 23.10.2016 and 25.12.2016. Since they failed to settled the said amount, they caused notice on 30.09.2019 to the defacto complainant and her husband and the same was duly received by them. But, they have not sent any reply. Thereafter, the first petitioner filed a suit in O.S.No.385 of 2019 on the file of the Principal Sub-Court, Srivilliputtur for recovery of money. The respondent also entered into appearance and filed written statement and thereafter, the defacto complainant lodged a complaint before the first respondent with false allegations and the same was also enquired by the police and closed as mistake of fact and civil dispute. Thereafter, the second respondent filed a private complaint before the learned Judicial Magistrate, Srivilliputtur under Section 156(3) Cr.P.C., and the same was forwarded to the first respondent herein and based on the same, the first respondent registered FIR in Cr.No.56 of 2020 for the offence under Sections 294(b), 406, 506(ii) IPC r/w Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998 and Section 4 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act.. The defacto complainant has given complaint, only in order to harass the petitioners to withdraw the suit. Hence, the said complaint is pure abuse of process of law. There is no averments to constitute the offence under Section 294(b) IPC and allegations are vague. As far as Section 406 IPC is concerned, a mere reading of FIR itself has not disclose any criminal breach of trust



against the petitioners. As far as Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act is concerned, already the petitioners have filed suit in O.S.No.385 of 2019 on the file of the Principal Sub-Court, Srivilliputtur for recovery of money and the same is pending, the question of charging exorbitant interest would not arise at all. Hence, the pending FIR is clear abuse of process of law and the same is liable to be quashed.

3.No counter was filed by the respondents.

4.The learned counsel appearing for the petitioners would submit that there is money dispute between the parties and the first petitioner filed suit in O.S.No.385 of 2019 on the file of the Principal Sub-Court, Srivilliputtur for recovery of money. In fact, the defacto complainant and her husband borrowed a sum of Rs.3,00,000/- and executed two pro-notes on various dates. Based on the same, the first petitioner filed suit for recovery of money and the same is pending. The second respondent also entered into appearance and filed written statement. Thereafter only, in order to harass the petitioners, the second respondent filed a complaint with vague allegations and the same is clear abuse of process of law. In fact, prior to the filing of suit, the petitioners sent a notice dated 13.09.2019, but, the defacto complainant and her husband have not sent any reply. Already, the second respondent has given complaint as against the petitioners and the



same was enquired and closed as mistake of fact and the matter is civil in nature. Thereafter, the second respondent preferred a private complaint before the learned Magistrate and the same was forwarded under Section 156(3) Cr.P.C., and based on the same, the first respondent registered FIR in Cr.No.56 of 2020 for the offence under Sections 294(b), 406, 506(ii) IPC r/w Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998 and Section 4 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act. Therefore, the pending FIR is clear abuse of process of law and the same is liable to be quashed.

5.The learned Government Advocate(Crl.side) appearing for the first respondent would contend that the petitioners lent money to the defacto complainant and got mortgage deed. After repayment of the amount, the petitioners failed to return the documents and thereby, cheated the defacto complainant. The first complaint preferred by the defacto complainant was closed as civil dispute and thereafter, she preferred private complaint before the learned Magistrate under Section 156(3) Cr.P.C., and the same was forwarded to the first respondent and based on the same, the first respondent registered FIR in Cr.No.56 of 2020 for the offence under Sections 294(b), 406, 506(ii) IPC r/w Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998 and Section 4 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act. Now the case is pending for investigation



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and the petitioners herein committed criminal breach of trust and failed to return the documents, even after repayment of the amount. Thereby, this case has to be elaborately investigated. Hence, this petition is liable to be dismissed.

6.Heard both sides and perused the materials available in the records.

7.On perusal of records reveals that it is admitted fact that there is money dispute pending between the parties and the first petitioner already filed a suit in O.S.No.385 of 2019 on the file of the Principal Sub-Court, Srivilliputtur for recovery of money, in the year 2019 itself. Therefore, it is admitted fact that this complaint has been lodged after filing of the above said suit. According to the petitioners, they already filed civil suit and prior to the filing of suit, they also sent a legal notice dated 13.09.2019 and the same was also received by the defacto complainant, but failed to send reply. Only after thought, in order to harass the petitioners, the present complaint has been lodged. Already, the defacto complainant lodged a complaint before the first respondent and the same was closed as mistake of fact and civil dispute. Thereafter, the present complaint was preferred before the learned Magistrate.

8.It is seen that civil dispute pending between the parties with regard

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

to the recovery of money and after filing of suit, this complaint has been



lodge alleging that the petitioners abused the defacto complainant in filthy language and committed criminal breach of trust and also threatened with dire consequences and also charged exorbitant interest. As far as Section 294(b) IPC is concerned, even as per FIR, this petitioners along with five persons shouted and abused in filthy language and also threatened to vacate the house. There is no specific overt act as to who abused her in filthy language and as per FIR, only vague and general allegations are levelled as against the petitioners. As far as Section 506(ii) IPC is concerned, all the accused caused criminal intimidation and this also vague allegation and there is no specific overt act as against this petitioners. There is no ingredients to constitute the offence under Section 4 of the Tamil Nadu Prohibition of Women Harassment Act. As far as Section 4 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act is concerned, already matter is pending before the civil Court with regard to the recovery money and interest and thereby, question of charging exorbitant interest will not attract and the defacto complainant has to workout her remedy through civil Court and the civil Court only has to decide as to whether the interest charged by the petitioners is exorbitant or not and how much interest has to be paid to the petitioners. Therefore, lodging of complaint itself shows that in order to give criminal color to the civil dispute, the same has been given. Hence, the pending FIR in Cr.No.56 of 2020 is clear abuse of process of law and the same is liable to be quashed.



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P.DHANABAL, J.,

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9.In view of the above discussions, this criminal original petition is allowed and the impugned FIR in Cr.No.56 of 2020 pending on the file of the first respondent is hereby quashed. Consequently, connected miscellaneous petition is closed.

12.09.2023

Index : Yes/No

Internet:Yes/No

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To

- 1.The Sub Inspector of Police,
Srivilliputtur,
Virudhunagar District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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