



Crl.R.C.(MD).No.896 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 16.03.2023

CORAM:

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

Crl.R.C.(MD).No.896 of 2022
and Crl.M.P.(MD).Nos.11160 & 11162 of 2022

1.R.Prabhu

2.R.Sumathi

3.R.Saravanan

... Petitioners/Accused 2 to 3

Vs.

A.M.Parameshwari

... Respondent/Complainant

PRAYER: Criminal Revision Case is filed under Section 397 r/w 401 of Cr.P.C, to call for the records relating to the order, dated 31.05.2022 made in Cr.M.P.No.2583 of 2021 in C.C.No.46 of 2019 on the file of the Judicial Magistrate Court, Vadipatti and set aside the same as illegal.

For petitioners : Mr.R.Gandhi

For Respondent : Mr.V.Thirumal

ORDER

This criminal revision case has been filed to set aside the order, dated 31.05.2022 made in Cr.M.P.No.2583 of 2021 in C.C.No.46 of 2019 on the file of the Judicial Magistrate Court, Vadipatti.



2.The facts in brief:

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The respondent herein filed the private complaint stating that in the year 2013, the first accused received a loan amount of Rs.1.12 lakhs for making out the Educational Expenses and has also executed a bond on 05.06.2013. In the above said bond, the second and third accused signed as witnesses. In stead of repeated demand, the amount was not repaid. They were dragging the repayment. They also criminally intimidated and insulted. On 01.06.2016, she gave a complaint before the Sub Inspector of Police, Samayanallur. During the enquiry, the police directed the accused to repay the money. There was undertaking by him to repay the amount in installments. Later on 09.12.2016, she sent a complaint to the Deputy Superintendent of Police. Even after that, there was no action. With these allegations, she filed a private complaint, which was taken cognizance by the trial Court and summons were also issued. After receiving the summons, they appeared before the trial Court and filed a discharge petition. That was dismissed by the trial Court stating that those facts, which are mentioned in the petition, cannot be taken into account at this stage. Against which, this criminal revision case has been preferred.



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3.Heard both sides.

4.The learned Senior Counsel, who appeared for the petitioners would submit that even as per the allegations made in the complaint, no criminality is attracted, since it is a civil transaction, involving loan and subsequent default. According to him, this prosecution itself is evident of abuse of process of the Court, which is liable to be quashed.

5.Per contra, the learned counsel for the respondent would submit that only on the basis of the *prima facie* materials in the form of recording the statement of witnesses, the case has been taken cognizance by the trial Court and the discharge application that has been filed by the petitioners was also dismissed. So according to him, no case has been made out by the petitioners to quash.

6.Reading of the trial court order as well as the complaint shows that it is nothing but a money transaction. Even though original cause of action arose in the year 2013, no civil proceedings was taken by the respondent, within the time of limitation to recover the amount. In stead she waited for the time to be barred by limitation and thereafter, found this method to collect the money by giving complaint in the year 2016,



before the police. The police has no role to enquire such a money transaction. Further it appears that they entertained the complaint and directed these petitioners to repay the money. That was not also paid by the petitioners. Later only private complaint was given after approaching the Superintendent of Police. Whether there was any intention on the part of the petitioners to cheat the respondent even at the time of the initial transaction, cannot be matter for consideration by this Court, sitting in Revisional powers. So that cannot be undertaken. Even though the learned Senior Counsel for the petitioners wants this Court to discuss the same, his arguments is to the effect that even if the allegations mentioned in the complaint are taken as true, the ingredients under Sections 417, 406 and 120B are not attracted.

7.No doubt that it is a simple money transaction. The cause of action is barred by limitation. So a novel way was found out a way to recover the amount by way of filing criminal complaint. What ever may be the undertaking given by the petitioners before the police in the enquiry, may not have any legal sanction. But, the fact remains that a petition has been filed by the respondent herein under Section 73 of the Indian Evidence Act to send the disputed document for Expert Examination. That was also allowed by the trial Court and further



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process is pending. In the meantime, this revision has been preferred. In the above said factual ground, the petition can revive the petition after the process in the above said petition is over. Because, pending the above said process, it may not be proper on the part of this Court to exercise the Revisional jurisdiction to discharge the petitioners from the prosecution.

8. With the above said liberty, this petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

16.03.2023

Index : Yes/No
Internet : Yes/No
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To

1. The Judicial Magistrate, Vadipatti.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVA. J.

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