BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 24.08.2023

Delivered On : 22.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl.O.P(MD).No.16006 of 2019
and
Crl.M.P.(MD)No.9521 of 2019

1.John Bosco
2.K.Elisath Mariammal ...Petitioners

Vs

1.The Inspector of Police,
Valliyoor Police Station, Valliyoor,
Tirunelveli District.
2.Mercy ...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the records relating to C.C.No.20 of 2019 on the file of the learned Judicial Magistrate, Vallioor, Tirunelveli District and quash the same.

For Petitioners	: Mr.T.Pon Ramkumar
For 1st Respondent	: Mr.M.Sakthikumar Government Advocate
For 2nd Respondent	: Mr.V.Sasikumar

ORDER

This petition is filed to quash the charge sheet in C.C.No.20 of 2019 pending on the file of the learned Judicial Magistrate, Valliyoor, Tirunelveli

District.

2.According to the petitioners, the second respondent gave a false complaint as against the petitioners and based on the false complaint, the first respondent registered a case in Crime No.162 of 2018 for the offence under Sections 294(b), 420, 506(ii) of IPC and Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act. Thereafter, the first respondent filed charge sheet and taken on file in C.C.No.20 of 2019 on the file of the learned Judicial Magistrate, Valliyoor.

3.According to the prosecution case, in the year 2016, for the medical expenses of the defacto complainant, she approached A1 for obtaining loan of Rs.1,50,000/-. Thereafter, she obtained loan of Rs.1,40,000/- at the rate of 7% interest and she paid Rs.9,500/- per month as interest towards the aforesaid loan amount. Thereafter, the petitioners demanded to repay the money. While so, on 03.12.2017, the petitioners went to the house of the defacto complainant and represented that they would arrange loan and thereby, the defacto complainant handed over two Axis bank cheques of her husband and three months salary bill and copy of pan card and Aadhar card. After receipt of aforesaid documents, they did not arrange for loan. Thereafter, on 22.02.2018, after pledging the jewels, the defacto complainant repaid the aforesaid loan amount. After repayment when the defacto complainant asked to return the aforesaid documents, they represented that the documents are with Financier, Thoothukudi. On 12.03.2018 at about 07.00 a.m, the defacto complainant went to the house of the petitioners and asked about the aforesaid documents including the cheques. For that, the petitioners abused in obscene words and also demanded more interest. Further A1 threatened the defacto complainant that he would file cheque case for Rs.10,00,000/- and they would give trouble to the job of her husband.

4.Based on the aforesaid complaint, FIR has been registered and thereafter, filed final report. In fact in the first week of July 2017, the husband of the defacto complainant namely, Ashok approached the first petitioner and borrowed a sum of Rs.4,00,000/-. At that time, the second respondent and her husband requested the first petitioner to offer loan since the jewels which were pledged in Muthoot Finance are brought for auction. Thereby, the first petitioner offered to help them by giving Rs.4,00,000/- without any interest. The second respondent and her husband redeemed the jewels pledged by them. Thereafter, when the petitioners asked about the repayment, he gave a cheque bearing No.019873 drawn at Axis bank, Tirunelveli for a sum of Rs. 4,00,000/-. Upon request of the husband of the second respondent, the cheque was presented for collection through his bank State Bank of India, Valliyoor and the same was returned on 05.02.2013 with a remark that the payment stopped by drawer. On 13.03.2018, he sent a statutory notice under Section 138 of Negotiable Instruments Act. This notice was duly received on 14.03.2018. Immediately on the same day, the first respondent called upon the first petitioner for enquiry and threatened thereafter, the petitioners lodged a complaint before the Deputy Superintendent of Police, Valliyoor. In that enquiry, the second respondent and her husband admitted the borrowal of amount and agreed to repay the same. The husband of the second respondent threatened the first petitioner that he would take steps to harass the petitioners by giving false complaints. Under such circumstances, the second respondent herein lodged a complaint before the respondent on 20.03.2018 and the aforesaid case was registered.

5.Thereafter, the petitioners filed Crl.O.P.(MD)No.7790 of 2018 and this Court granted interim stay and the same was communicated to the respondents on 31.05.2018 through registered post. While so, the first respondent colluded with the second respondent husband who is working as Head Constable in the first respondent office, the charge sheet was filed before the learned Judicial Magistrate, Valliyoor. There is no ingredients to constitute offence under Sections 294(b), 420, 506(ii) of IPC and Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act. Only to wreck vengeance for the cheque case filed by the first petitioner, the present complaint has been lodged, at the instigation of the husband of the second respondent, who is working in Police Department. Therefore, the pending charge sheet is abuse of process of law and the same is liable to be quashed.

6.No counter was filed on the side of the respondents.

7.The learned counsel appearing for the petitioners has argued that the second respondent along with her husband borrowed a sum of Rs.4,00,000/- from the first petitioner and issued a cheque in front of the first petitioner and the same was presented for collection and the same was returned as stop payment by the drawer. Thereafter, the first petitioner issued notice under Section 138 of Negotiable Instruments Act. After receipt of notice, on the same day, this complaint was lodged by the second respondent. Even according to the complaint the second respondent borrowed a sum of Rs. 1,40,000/- and the same was repaid at the rate of 7% interest. After repayment of aforesaid amount, this occurrence said to be happened. As per the averments of the complaint, the second respondent handed over cheques and other identity cards of her husband and the same was not returned by the petitioners. While the same was questioned by the defacto complainant, the petitioners abused obscene words and threatened them. In fact no such occurrence was happened. In order to evade from paying aforesaid Rs. 4,00,000/- which was borrowed by the second respondent's husband, the present complaint has been lodged.

8.Therefore, these petitioners after registration of the FIR approached this Court through Crl.O.P.(MD)No.7790 of 2018 and in that petition, interim stay was granted. The police have filed final report in collusion with the husband of the second respondent. Even according to the complaint, allegations are not specific and alleged exorbitant interest was already paid and no any demand of exorbitant interest and no any harassment made by the petitioners even according to the FIR. After the receipt of notice under Section 138 of Negotiable Instruments Act only, this complaint has been lodged against these petitioners and the husband of the second respondent misused his official power and thereby, the charge sheet is liable to be quashed.

9.The learned counsel appearing for the petitioners relied upon the following judgments:-

(i)Indiabulls Financial Service Limited and another V. Jubilee Plots and Housing Private Limited and others reported in 2010-2-L.W.75;

(ii)A.Gunasekaran v. P.Velusamy reported in 2014(1) Mwn (Cr.) DCC 49 (Mad);

(iii)T.Karthikeyan and others v. State and another in Crl.O.P.Nos.4877, 7896 and 7897 of 2018;

(iv)M.Sudha v. State reported in CDJ 2019 MHC 2471;

(v)Sridhar v. State in Crl.O.P.Nos.19170, 19174, and 19222 of 2020;

(vi)Karthikeyan and others v. The Inspector of Police and another in Crl.O.P.(MD)No.10086 of 2019.

10.The learned counsel appearing for the second respondent contended that the second respondent obtained loan from the first petitioner for a sum of Rs.1,40,000/- and the rate of interest is 7 % and she paid a sum of Rs.9,500/- per month. Thereafter, the petitioners approached the second respondent stating that they will arrange loan and thereby, they got two cheques of the second respondent's husband and photos and other identity cards of the second respondent's husband and thereafter, the petitioners have not arranged hand loan for her and by pledging her jewels, she repaid Rs.1,40,000/- to the first petitioner. In the meantime, the petitioners demanded more interest and also threatened her. Thereafter, when the defacto complainant approached the petitioners for repayment of the cheques and other documents which were handed over by her for obtaining loan, they refused to return the same and they abused in filthy language and caused criminal intimidation and they demanded more interest. Hence, she lodged a complaint before the first respondent and the respondent police also registered FIR and investigated the case and filed final report. Now the case is pending before the learned Judicial Magistrate, Valliyoor and the petitioners have to face trial. At this stage, this Court cannot entertain the present petition and it is liable to be dismissed.

11.The learned Government Advocate appearing for the first respondent would contend that based on the complaint by the second respondent, the first respondent registered a case in Crime No.162 of 2018 for the offence under Sections 294(b), 420, 506(ii) of IPC and Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act. Thereafter, the first respondent conducted investigation and during investigation, since *prima facie* material is available as against the petitioners, they filed final report and the learned Judicial Magistrate has also taken cognizance in C.C.No.20 of 2019. Since *prima facie* material is available as against the petitioners, this petitioners have to face the trial. Thereby, this petition is liable to be dismissed.

12.Heard both sides and perused the materials available on records.

13.On perusal of records, it is observed that based on the complaint of the second respondent, the first respondent registered FIR in Crime No.162 of 2018 and thereafter, investigated the case and filed final report and the learned

Judicial Magistrate, Valliyoor has taken cognizance in C.C.No.20 of 2019. In this case, it is admitted fact that the cheque case has been filed by the first petitioner as against the husband of the second respondent. The date of notice issued by the petitioners is 13.03.2018 and the date of acknowledgment by the husband of the second respondent is 14.03.2018. The reply from the husband of the second respondent is 27.03.2018. The aforesaid cheque complaint dated 27.04.2018. The date of alleged occurrence is 12.03.2018 I.e, one day prior to the date of notice issued by the petitioner, but the date of complaintis 20.03.2018 I.e. after receipt of cheque notice.

14.According to the petitioners, the petitioners paid a sum of Rs. 4,00,000/- to the husband of the defacto complainant. Thereafter, he issued a cheque for the said amount and the same was presented for collection on 02.03.2018 and the same was returned as 'stop payment by drawer'. Therefore, the petitioners issued a notice dated 13.03.2018 and thereafter, reply notice was given by the second respondent on 27.03.2018. There is delay of 8 days and the same has not been properly explained and further, after receipt of notice under Section 138 of Negotiable Instruments Act, only this complaint has been lodged. Even according to the averments of FIR and final report, already defacto complainant borrowed money for the interest at the rate of 7% and the same was repaid. After repayment of the said amount only, the occurrence was happened.

15.According to the defacto complainant, she borrowed a sum of Rs. 1,40,000/- and the same was repaid by her in the year 2018 itself. Thereafter, the petitioners induced her to give cheques and identity proof of her husband for availing loan and they did not return back the aforesaid cheques and other identity cards. When the same was questioned by the second respondent, these petitioners abused her. Hence, she filed complaint. Thereby, the first respondent registered FIR and after conducting investigation, the final report was filed under Sections Sections 294(b), 420, 506(ii) of IPC and Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act

16.As far as Section 294(b) of IPC is concerned, there is no specific date and place mentioned in the FIR that where the occurrence took place. There is no any materials to attract provision under Section 420 of IPC and even according to the final report, the petitioners received cheque along with other documents and the same were not returned back. It is not the case of the defacto complainant that the first petitioner misused the cheque, which was issued by the petitioners and her contention is that they did not return the cheque and no materials that the accused had intention to cheat the complainant from the inception. Therefore, the offence under Section 420 of

IPC would not attract. As far as Section 506(ii) of IPC is concerned, there is no specific allegation and the allegations are vague and bald ones. As far as Section 4 of Tamil Nadu Prohibition of Exorbitant Interest Act is concerned, there is no averments with regard to the charging of the exorbitant interest. Even as per FIR and charge sheet, already the loan was settled and after settlement, no question of charging exorbitant interest would arise.

17.On perusal of records, it shows that the first petitioner already filed cheque case and issued notice and thereafter, on receipt of the notice, this complaint has been lodged that too with the inordinate delay of 8 days. Therefore, the attitude of the defacto complainant in lodging the complaint would shows that in order to counter-blast to the cheque case, this complaint has been filed. Without proper investigation, the first respondent also filed charge sheet. Therefore, the pending charge sheet based on the aforesaid complaint is clear abuse of process of law.

18.The learned counsel appearing for petitioners produced judgment of this Court in the case of ***Indiabulls Financial Service Limited and another V. Jubilee Plots and Housing Private Limited and others*** reported in ***2010-2-L.W.75***, wherein this Court in para no.20 and 24 held as follows:-

"20.In the light of the aforesaid decision, I hold that the

Tamil Nadu Money Lenders Act, 1957, and the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, would not apply to money lenders who advance loans on the basis of negotiable instruments exceeding Rs.10,000/-."

19.The learned counsel appearing for the petitioners relied upon the judgment of this Court in the case of ***A.Gunasekaran v. P.Velusamy*** reported in ***2014(1) Mwn (Cr.) DCC 49 (Mad)***, wherein the Hon'ble Supreme Court in para nos.9 to 11 held as follows:-

"9.Section 2(6) of Money Lenders Act defines 'loan' means an advance whether of money or in kind at interest and includes any transaction which the Court finds in substance to amount to such an advance, but does not include (i)..to (v)..., (vi) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act 1881 exceeding rupees ten thousand. Section 2(8) defines 'money lender' means a person whose main or subsidiary occupation is the business of advancing and realising loans, but excludes a bank or a co-operative society. Section 7 provides for "interest and charges allowed to money lenders". It says no money lender shall charge interest on any loan, at a rate exceeding such rate as the Government may, by notification, fix from time to time. Thus, the combined appreciation of definition under Sections 2(6)(vi), 2(8) and 7 would undisputedly explain that the loan transaction involved in the present case does not fall within the ambit of Money Lenders Act.

10.Like wise, Section 2(6) of the Tamil Nadu Act 38 of 2003 defines 'loan' means an advance of money for daily vatti, hourly vatti, kandhu vatti, meter vatti or thandal. Section 2(7) provides 'meter vatti', means an interest which will work out to an interest rate more than that fixed by the Government under section 7 of the Money Lenders Act, for every day on the loan amount not paid within the stipulated time. Section 3 prohibits charging of exorbitant interest', under this provision, no person shall charge exorbitant interest on any loan advanced by him. Section 4 provides for 'Penalty' which says notwithstanding anything contained in the money lenders Act, whoever contravenes the provisions of Section 3 or molests or abet the molestation of any debtor for recovery of any loan shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to third thousand rupees. Section 12 provides for 'application of provisions of Tamil Nadu Money Lenders Act', and says subject to the provisions of this Act, the provisions of the Money Lenders Act, insofar as they are applicable to Money Lenders shall mutatis mutandis apply to a person referred to in section 3 of this Act.

11.The combined reading of the Sections 2(6), 3, 4 and 12 would lead to an interpretation that the definition of 'loan' and 'money lender' as defined under the Money Lenders Act is also applicable to 'loan' and 'a person' as referred to under Section 3 of the Tamil Nadu Act 38/2003. Non-obstante Clause in Section 4 is applicable only to penalty and the penalty imposed under section 4 is to be construed as in addition to penalty cause as provided under the Money Lenders Act. Similar view was expressed by the Division

Bench of our High court in the judgment cited above. In the event of such interpretation, the advance made on the basis of negotiable instrument exceeding Rs.10,000/- would not fall under the definition of 'loan' and fall outside the purview of the Act and the defence advanced by the accused for seeking quash is not available to the accused and no valid ground is made out to quash the proceedings at the threshold. In view of such finding rendered herein, the authority cited on the side of the petitioner herein is not applicable to the facts of the present case. However, the petitioner is at liberty to raise all the defence available to him including that of the ground raised herein at appropriate stage before the trial court."

20.The learned counsel appearing for the petitioners relied upon the judgment of this Court in the case of **T.Karthikeyan and others v. State and another in Crl.O.P.Nos.4877, 7896 and 7897 of 2018**, wherein the Hon'ble Court in para nos.10 & 11 held 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."

21.The learned counsel appearing for the petitioners relied upon the judgment of this Court in the case of ***M.Sudha v. State reported in CDJ 2019 MHC 2471***, wherein the Hon'ble Court in para no.9 held as follows:-

> *"In the case on hand, to escape from the clutches of proceedings for the offence punishable under Section 138 of Negotiable Instrucments Act, the present complaint has been lodged as against the petitioner. Further the provisions of the Money Laundering Act are not attracted as against the petitioner, as discussed in the above judgment. Therefore, entire complaint has been vitiated and it is clear abuse in process of law. Therefore, the complaint has no legs to stand further and liable to be quashed."*

22.The learned counsel appearing for the petitioners relied upon the judgment of this Court in the case of ***Sridhar v. State in Crl.O.P.Nos.19170, 19174, and 19222 of 2020***, wherein the Hon'ble Court in para no.41 held as follows:-

> *"41. Further, the specific case of the defacto complainant is that the petitioner, as Director of M/s. JR Capital Services (P) Ltd., is prosecuted. In this case, admittedly, the said JR Capital Services (P) Ltd., is not arrayed as an accused. In the event of the Principal not made as an accused, the petitioner as Director cannot be proceeded, unless there are materials to show that that*

the petitioner acted as alter ego of JR Capital Services (P) Ltd, there is no specific overt act for the same. Further, from the list of witnesses it is seen that in all the 3 cases, the witnesses are identical, L.W.1 is the defacto complainant; L.W.2, L.W.3 are partner and brothers; L.W.4 is the family member and L.W.5 is the Manager of City Union Bank and L.W.6 is the Investigating Officer. All the witnesses state about the relationship and transactions between the petitioner from the year 2009 and for almost a decade, they have been doing business and suddenly some misunderstanding arose in the year 2017, thereafter, complaint lodged. Other than the family members of the defacto complainant, the City Union Bank Manager is the only other witness, who states about furnishing statement of accounts from the year 2009 to 2017. The statement of accounts is not disputed. The transaction between the petitioner and the defacto complainant is only through bank, which is reflected in the statutory returns. Other than that, it is investigating officer, from the statement of witnesses and documents produced it is seen that there is no case made out against the petitioner. Further on the facts and materials, the petitioner cannot be Termed as Money Lender, the corporate deposit and Transaction cannot be cloaked as loan, with exorbitant interest. The petitioner company not arrayed as accused, in absence of the company, the petitioner cannot be prosecuted as Director. In view of the same, this Court finds that the continuation of proceedings would amount to abuse of process of law. Hence, the proceedings against the petitioner in all the three cases are liable to be quashed."

23.The learned counsel appearing for the petitioners relied upon the judgment of this Court in the case of ***Karthikeyan and others v. The Inspector of Police and another in Crl.O.P.(MD)No.10086 of 2019***, wherein the Hon'ble Court in para nos.11 to 14 held as follows:-

> *“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."

24.On careful reading of those judgments, it is clear that the Tamil Nadu Prohibition of Charging Exorbitant Interest Act and Tamil Nadu Money Lenders Act would not apply to money lending who advanced loans on the basis of Negotiable Instruments exceeding Rs.10,000/- and in order to prevent the abuse of process of Court, the Court can invoke the power under Section 482 of Cr.P.C. In this case on hand also, already there is a money dispute pending between the parties and cheque case is also pending. After receipt of cheque case notice, this present complaint is lodged with delay of eight days and without any proper materials to constitute the offences.

25.Therefore as discussed supra, this Criminal Original Petition is allowed and the impugned charge sheet in C.C.No.20 of 2019 pending on the file of the learned Judicial Magistrate, Valliyoor, Tirunelveli District is hereby quashed. Consequently, connected miscellaneous petition is closed.

22.09.2023

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

To

1.The Judicial Magistrate, Valliyoor, Tirunelveli District.

2.The Inspector of Police,
Valliyoor Police Station, Valliyoor,
Tirunelveli District.

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

P. DHANABAL,J.

Mrn

Crl.O.P(MD).No.16006 of 2019

22.09.2023