BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 17/10/2023

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

Crl.OP(MD)No.23193 of 2022
and
Crl.MP(MD)No.16470 of 2022

1.C.Raja
2.Malarvizhi : Petitioners/A1 and A2

Vs.

1.The State rep. by
The Sub Inspector of Police,
Dindigul Town South Police Station,
Dindigul.
(Ref.Crime No.886 of 2009) : R1/Complainant

2.Amutha,
Malar-II Women Self-Help Group,
Guru Nagar,
Dindigul. : R2/De-facto Complainant

PRAYER:- Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records pertaining to CC No.245 of 2010 on the file of the Judicial Magistrate No.III, Dindigul and quash the charge sheet and consequently all further proceedings as against the petitioners and pass such other suitable and appropriate orders.

For Petitioners : Mr.D.Shanmugaraja Sethupathi

For 1st Respondent : Mr.M.Sakthi Kumar
Government Advocate
(Criminal Side)

For 2nd Respondent : No appearance

O R D E R

This criminal original petition has been filed seeking quashment of the case in CC No.245 of 2010 on the file of the Judicial Magistrate No.III, Dindigul.

2.The case of the prosecution is that the de-facto complainant lodged a complaint stating that she was working as Head of the Woman Self-Help Group namely Malar-II Women Self-Help Group. The first petitioner namely A1 is the Managing Trustee of JJ Trust. The second petitioner is also one of the Trustees of the said Trust. The members of Malar-II Self-Help Group obtained term loan, on 23/02/2017. The loan amount is Rs.10,000/- each. The above said Group consisting of 20 members. The total amount borrowed by the members is Rs.2,00,000/-. The lending Bank is Bank of Baroda, Dindigul Branch. The members of the Group were regularly paying the loan amount along with interest. But the Head of the Self-Help Group did not remit the loan amount to the Bank. It has been alleged that the amount was handed over to A1 and A2, but they were not remitted to the Bank. So all the accused persons cheated the members of Self-Help Group. The above said non-payment of the loan amount was brought to the notice of the complainant by the concerned Bank. When enquiry was made by the complainant and others, the accused persons stated to have threatened them with dire consequences. On the basis of the complaint given by the de-facto complainant, a case in Crime No.886 of 2009 was registered for the offences under sections 420 and 506(i)IPC. After that, charge sheet was filed and it was taken in CC No.245 of 2010 by the Judicial Magistrate No.III, Dindigul.

3.During the course of investigation, finding that the de-facto complainant is also one of the accused, she was also added.

4.Seeking quashment of the entire proceedings, this petition has been filed by the petitioners on the ground that the ingredients of the offences under section 420 and 506(i) IPC are not attracted. So according to him, no specific allegation has been made against these petitioners; During the course of investigation, one of the witnesses has simply stated that the amount paid by the de-facto complainant and others only to A3 namely Amutha; This petitioner cannot be criminally responsible.

5.Heard both sides.

6.As mentioned in the preamble portion of the complaint as well as the averments made in the complaint and in the final report, it is seen that these two persons are the members of the Self-Help Group called Malar-II Group. Through the Trustees only obtained by the members from the Bank of Baroda, Dindigul Branch.

7.It is not in dispute that the members of the Self-Help Group obtained loan amount of Rs.2,00,000/- from the Bank. According to the complainant as well as from the final report, it is seen that the amount was given by the members of the Self-Help Group to A3. A3 in turn handed over the money to A1 and A2. But they failed to remit the same. This is the allegation in the final report.

8.The learned counsel appearing for the petitioners would submit that none of the witnesses examined during the course of the investigation stated implicating these petitioners. They have implicated only A3 stating that she received the amount from the members, but later failed to remit the same to the Bank.

9.It is seen that A3 was working as Head of Self-Help Group. As practice indicated amount has been collected by A3. As a Trustee, the Managing trustee was also responsible for the above said remittance.

10.The learned counsel appearing for the petitioners would be referred to the statement of some of the witnesses, who stated to the effect that A3 has collected the amount, made entry in the note book and used to remit the amount. The balance amount was paid to the petitioners, who in turn remitted the same to the Bank. So according to them, this will indicate the involvement only A3 and not these petitioners.

11.But a careful perusal of the evidence recorded during the investigation reveals that these petitioners were also involved in the misappropriation of the amount. So when *prima facie* materials have been collected during the course of the investigation to implicate these petitioners, the contention on the part of the petitioners that none of the witnesses implicating these petitioners is not correct on record.

12.Whether the amount has been actually remitted or not cannot be a matter for consideration by this court sitting under section 482 of Cr.P.C. It is purely a factual issue, which got to be tried thoroughly to its logical conclusion. Even though section 120(B) IPC is not mentioned in the final report, the combined reading of the final report and the case of the prosecution will reveal that it is a joint action on the side of all the accused persons. So being the Trustees of the above said Trust, these petitioners cannot disown their responsibility. As mentioned above, whether they have also misappropriated the amount collected by A3 can be found out only during the course of trial.

13.So, I find no reason to entertain this petition at this stage without any basic materials placed by the petitioners before this court. Only factual aspects have been indicated in the grounds.

14.I find that this is not a fittest case to exercise the discretionary power. Accordingly, this criminal original petition is **dismissed.** Consequently, connected Miscellaneous Petition is closed.

17/10/2023

Index:Yes/No
Internet:Yes/No
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To,

1.The Judicial Magistrate No.III,
  Dindigul.

2.The Sub Inspector of Police,
  Dindigul Town South Police Station,
  Dindigul District.

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

G.ILANGOVAN, J

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