WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.06.2024

CORAM :

THE HON'BLE MR JUSTICE A.A.NAKKIRAN

Crl.O.P(MD)No. 9096 of 2021
and
Crl.M.P(MD).Nos.4659 and 4660 of 2021

Lekha ... Petitioner / Accused

Vs.

Sekar ... Respondent / Complainant

PRAYER:- Petition filed under Section 482 Cr.P.C., to call for the records relating to the Private Complaint in C.C.No.46 of 2020 on the file of the Judicial Magistrate Court No.I, Nagercoil and quash the same as illegal.

For Petitioner : Mr.Ajmal Khan
for M/s.Ajmal Associates
For Respondent : Mr.K.Muthu Ganesa Pandian

O R D E R

This petition has been filed to quash the impugned charge sheet in C.C.No.46 of 2020 on the file of the Judicial Magistrate Court No.I, Nagercoil.

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

WEB COPY

2.The case of the prosecution is that the respondent is presently working in Muthoot Bankers Ltd., Nagercoil. During the year 2013, he was working in HDFC Bank, Anna Nagar Branch, Chennai. Since, the petitioner is the customer of above said Branch, they very well known each other. The petitioner informed the respondent that she is doing constructing business and offered to build a house for him and also demanded him to give money for that. On believing her words, he has given a sum of Rs.10,55,000/- to her on various occasions. Thereafter, the petitioner, neither constructed a house nor repaid the amount. Hence, he lodged a private complaint under Section 156(3) of Cr.P.C., before the learned Judicial Magistrate Ccourt No.I, Nagercoil and the same was taken on file in C.C.No.46 of 2020 under Section 190 & 200 Cr.P.C., for the offence punishable under Section 420 of IPC. Aggrieved against the same, present petition has been filed by the petitioner.

3.The learned counsel appearing for the petitioner submitted that the amount was borrowed from the respondent in the year 2016. But, after a lapse of 3 years, ie., 26.03.2019, the present complaint has been filed by the respondent. So, it is clearly barred by limitation under the

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

WEB COPY

provision of Section 468 of Cr.P.C. Further, the reading of the private complaint does not disclose any offence under Section 420 of IPC. Therefore, the offence under Section 420 IPC would not attract as against the petitioner.

4. The learned counsel appearing for the petitioner further submitted that the defacto complainant with the help of the police obtained an undertaking from the petitioner at Police Station that she had agreed to repay the amount within a period of 6 months. This is not acceptable one. Even though, all the materials were placed before the learned Magistrate, he has taken a private complaint on file without applying his mind.

5. The learned counsel appearing for the petitioner further submitted the there is no intention to the petitioner to cheat the respondent. When the transaction is a civil or business transaction, the question of criminal liability does not arise and the respondent ought to have filed a civil suit before the civil forum in stead of filing a private complaint before the Court below. Accordingly, the proceedings initiated as against the petitioner is illegal and the same is liable to be quashed.

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

WEB COPY

6. Per contra, the learned counsel appearing for the respondent submitted that due to unavoidable circumstances, the respondent is unable to file a case within a limitation period of 3 years. The petitioner received the amount of Rs.10,55,000/- from the defacto complainant only to construct a house for him and not for interest. Thereafter, she neither constructed a house nor repaid the amount. Thereby, she cheated the defacto complainant. Hence, the offence under Section 420 of IPC is very well attracted as against the petitioner.

7. The learned counsel appearing for the respondent further submitted that the learned Magistrate after recording the evidence, go through all the documents and thereafter only, taken the case on cognizance. Hence, there is no violation in taking the case on file as alleged by the learned counsel for the petitioner. Accordingly, he prayed for dismissal of this petition.

8. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

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

WEB COPY

9. On perusal of records shows that it is purely a money transaction and that too business transaction. So, instead of seeking remedy before the civil forum, he filed a private complaint before the Court below. However, later, he obtained an undertaking from the petitioner with the help of police at Police Station and it creates suspicious. There is no sufficient materials in this case to take cognizance. Mere examination of the complainant is not sufficient to prove the case. Hence, this Court is of the considered view that the proceedings against the petitioner is liable to be quashed.

10. Accordingly, the impugned proceedings in C.C.No.46 of 2020 on the file of the Judicial Magistrate Court No.I, Nagercoil, is hereby set aside and the Criminal Original Petition stands allowed. Consequently, the connected Miscellaneous Petitions are closed.

04.06.2024

Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order
dss

To

The Judicial Magistrate Court No.I,
Nagercoil.

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

WEB COPY

A.A.NAKKIRAN, J.

dss

Crl.O.P(MD)No. 9096 of 2021
and
Crl.M.P(MD).Nos.4659 and 4660 of 2021

04.06.2024