



Crl.O.P(MD).No.12578 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.04.2024

CORAM :

THE HON'BLE MR JUSTICE A.A.NAKKIRAN

Crl.O.P(MD).No.12578 of 2022 and
Crl.M.P(MD).Nos.7965 & 7966 of 2022 & 10281 of 2023

1.S.Ashok Murugan
2.A.Jayalakshmi

... Petitioners/A1 and A2

Vs.

1.State rep. by Inspector of Police,
Thandikudi Police Station,
Dindigul.
(Crime No.208 of 2021)

2.D.C.Ramkumar

... Respondents

PRAYER:- Petition filed under Section 482 Cr.P.C., to call for the records in C.C.No.17 of 2022 pending on the file of the District Munsif-cum-Judicial Magistrate, Kodaikanal and quash the same.

For Petitioner : Mr.P.Karthick

For Respondent No.1 : Mr.K.Sanjai Gandhi

Government Advocate (Crl. Side)

For 2nd respondent : Mr.C.Mayil Vahana Rajendran



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ORDER

This Criminal Original Petition has been filed to call for the records in C.C.No.17 of 2022 pending on the file of the District Munsif-cum-Judicial Magistrate, Kodaikanal and quash the same.

2.The case of the prosecution is that the petitioners and the defacto complainant was doing coffee seed business and hence, they had business transactions. In 2016, the first petitioner obtained Rs. 7,00,000/- from the defacto complainant by mortgaging a property located in Uthamapalayam. The said property is in the name of his wife, viz., the second petitioner. Even after the repeated request of the defacto complainant, the petitioners failed to repay the debit as promised. On 20.09.2021 at around 9.00 p.m, when the defacto complainant was standing near the panikadu intersection, the petitioners came in two wheeler and abused the defacto complainant with filthy language for giving repeated complaint against the petitioners. Moreover, the petitioners have informed the defacto complainant that even the document given as security for mortgage is fake document, so he cannot do anything against the petitioners and the petitioners gave life threat to



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the defacto complainant. Hence, the First Information Report has been filed for the offences under Sections 294(b), 406 and 506(ii) IPC. Based on which, the charge sheet has been filed.

3.The learned counsel appearing for the petitioners would submit that the present complaint was lodged with the *mala fide* intention and abuse of process of law. This is purely a civil dispute between the first petitioner and the defacto complainant. Already, a cheque bounce case under Section 138 of Negotiable Instruments Act is pending in STC No. 121 of 2020 before the Judicial Magistrate, Kodaikanal. He would further submit that the defacto complainant has suppressed the real fact. In June 2015, the petitioner borrowed Rs.15,00,000/- from the defacto complainant for interest at the rate of 24%. Towards the part settlement of debts together with interest, the petitioner had sold his 12 cents of property situated at Suleeswaranpatty, Pollachi Taluk, for Rs.8 lakhs to the defacto complainant on 31.08.2016. Further, the defacto complainant had also forcibly purchased 4 cents of house site situated at Makkinampattay Village of Pollachi Taluk from the second petitioner. The learned counsel would also submit that the inordinate delay of ten days in lodging the FIR after the occurrence, is not explained by the



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defacto complainant. The occurrence said to have taken place on 20.09.2021, however, the present FIR is lodged only on 30.09.2021.

Hence, the learned counsel prays for quashing the charge sheet.

4. The learned counsel appearing for the 2nd respondent would submit that the offence committed by the petitioners is serious in nature and hence, prays for dismissal of this petition.

5. The learned Government Advocate (Crl. Side) appearing for the first respondent Police would also submit that the petitioners have committed serious offence and hence, he prays for dismissal of this petition.

6. Heard the learned counsel appearing on either side and perused the materials available on record.

7. A perusal of the records would show that the FIR has been registered for the offences under Section 294(b), 406 and 506(ii) IPC. However, it is seen that several transactions have been made between the petitioners and the defacto complainant. There are business transactions



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between the petitioners and the defacto complainant. Further, a cheque case in STC No.121 of 2020 is also pending before the Judicial Magistrate, Kodaikanal. Since there are several business transactions made between the petitioners and the defacto complainant, the offence under Section 406 IPC would not be attracted.

8. Insofar as the offences under Sections 294(b) and 506(ii) IPC are concerned, there are materials available. In this regard, Section 161(3) Cr.P.C statements have been produced. Hence, apart from the section 406 IPC, the petitioners have to face the trial for the other charges under Section 294(b) and 506(ii) IPC. Therefore, the charge sheet in CC No.17 of 2022 has been quashed in respect of charge under Section 406 alone. It is not possible for this Court to quash the entire proceedings.

9. Accordingly, this Criminal Original Petition is partly allowed. However, the petitioners are given liberty to raise all their contentions, including the contentions raised in this Criminal Original Petition at the time of trial.



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10. In the circumstances, the learned counsel appearing for the petitioners seeks to dispense with the personal appearance of the petitioners before the trial Court.

11. Taking into consideration of the request as made by the learned counsel for the petitioners, the appearance of the petitioners before the trial court is dispensed with except for their appearance for the purpose of receiving the copy of the proceedings u/s 207 Cr.P.C., framing of charges, questioning under Section 313 Cr.P.C. and on the day on which judgment is to be pronounced. However, if for any particular reason, the presence of the petitioners is necessary, the trial court, at its wisdom, shall direct those appearance on those days. Consequently, connected miscellaneous petitions are closed.

23.04.2024

Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order
skn
To

1.The Inspector of Police,
Thandikudi Police Station,
Dindigul.



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2. The District Munsif-cum-Judicial Magistrate, Kodaikanal.

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



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A.A.NAKKIRAN, J.

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