



CRL OP(MD)No.10660 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRL OP(MD)No.10660 of 2024
and
CRL MP(MD)No.7124 of 2024

1.A.Jainullaiddin

2.Waheeda Banu

3.J.Shahanna

... Petitioners / A 2 to A 4

Vs

1.The Inspector of Police,
AWPS – Thallakulam,
Madurai
[Crime No.5 of 2024].

2.Thaslim

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 CrPC to call for the records of the FIR in crime No.05 of 2024 pending investigation on the file of the 1st respondent police and quash the same as against these petitioners.

For Petitioner : Mr.S.Thirupathy

For Respondent : Mr.M.Sakthi Kumar,
No.1 Government Advocate (Crl Side)

For Respondent : Mr.SMA.Jinnah,
No.2



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ORDER

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The petitioners are accused Nos.2 to 4 in Crime No.5 of 2024 on the file of the respondent Police have filed this application to quash the proceedings, which is pending as against them.

2.The prosecution case is that 2nd respondent / defacto complainant has contacted 1st accused through a matrimonial website and the 1st accused offered to marry her. Both have moved closely and had physical relationship also without any marriage. The petitioners / parents and sister of 1st accused have assured her that marriage would be performed between herself and A1. While so due to their physical relationship, she got pregnant and on instructions of A1, it was aborted. A1 has received a sum of Rs.7 lakh from 2nd respondent, for the treatment of his sister / 3rd petitioner. Under such circumstances, the petitioners informed the 2nd respondent that they were arranging marriage for A1 with another woman. Further they did not repay the money to the 2nd respondent and cheated her. Therefore she has lodged a complaint. Based on the complaint, the respondent police have registered a case in Crime No.5 of 2024 for the offence under Sections 417, 420 and 506(ii) IPC.



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3. The learned Counsel for the petitioners submits that this case has been foisted in order to wreak vengeance as against A1. The 1st and 2nd petitioners are father and mother of A1 and they are living separately at Avaniyapuram. The 3rd petitioner / sister of the A1 is a married woman and living with her husband at Tiruvendram.

4. The learned Counsel has pointed out that A1 is a married man and he got divorce. The defacto complainant is also a married woman and divorced her husband. She contacted A1 through a matrimonial website. Both are B.E., graduates, aged about 32 years and are working as software engineers in Chennai. The petitioners, who are residing separately are unaware of the relationship of the 2nd respondent with A1 and the dispute, if any between them. However the 2nd respondent in order to wreak vengeance as against A1, has roped in these petitioners also as accused. The learned Counsel also disputed that the 3rd petitioner has not suffered with any ailment and therefore there was no necessity for them, to get money from the 2nd respondent for medical expenses and therefore, the learned Counsel prayed that the complaint pending as against the petitioners be quashed.



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5.The 2nd respondent has entered appearance through her counsel and submits that A1 has cheated her by promising to marry her. These petitioners have also promised her that they would conduct marriage. Further they have received a sum of Rs.7 lakh for the treatment of the 3rd petitioner that she had fibroid problem during her pregnancy and therefore the 2nd respondent had given money for her treatment. Therefore according to her a clear case has been made out against the petitioners.

6.This Court by considering submission of the learned Counsel for the petitioners was about to quash the proceedings pending as against the petitioners / A2 to A4 on 18.07.2024, when this application was listed for admission. After sensing the view of this Court, the learned Counsel for the 2nd respondent insisted that an opportunity must be provided for filing counter affidavit and therefore, this Court adjourned the case to 29.07.2024.

7.The 2nd respondent / defacto complainant has filed a detailed counter affidavit narrating the statements made by her in the FIR. In addition to that she has also stated that the investigation in this



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case has been completed and final report has also been filed on 25.04.2024. It is also stated that the respondent police have altered into the offence under Sections 417, 420, 376, 313 and 506(ii) r/w 109 IPC.

8.The 1st respondent police have filed a status report as stated by the 2nd respondent that they have completed the investigation and filed the final report on 25.04.2024 through e-filing for the offence under Sections 417, 420, 376, 313, 506(ii) r/w 109 IPC and a copy of the final report, filed through e-filing is also placed before this Court. As per the final report, the investigation officer came to the conclusion that A1 has committed offence under Sections 417, 420, 376, 313 and 506(ii) IPC and A2 to A4 have committed the offence under Sections 420 and 506(ii) IPC.

9.This Court considered the rival submissions and perused the materials placed on record.

10.The 2nd respondent / defacto complainant is a married woman, aged about 32 years and got divorce. A1 is also a divorcee



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aged about 32 years. Both are BE., graduates working as software engineers in Chennai. They contacted each other through a matrimonial website. The FIR does not disclose the details as to when she contacted A1. As per the final report filed by the respondent police, it appears that the 2nd respondent had met A1 in March 2022 for the purpose of marriage. However without marrying, both moved closely and also had physical relationship. Further she has stated that she was pregnant in March 2023 and on the instruction of A1, she has undergone abortion. While so, the respondent police without even collecting and verifying the details such as the nature of treatment undergone by the 2nd respondent, the hospital and the date, etc., have mechanically filed the final report. Another vague allegation has been made by the 2nd respondent that a sum of Rs.7 lakh is given to A1 for the purpose of treatment for fibroid to the 3rd petitioner. However it has been disputed by the petitioners that the 3rd petitioner did not have such problem. It appears that after this court has expressed that no case has been made out as against the petitioners, the investigating agency has hurriedly filed the final report, without collecting any materials as to the nature of the treatment provided to the 3rd



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petitioner and the expenses incurred for the same. Even assuming some transfer of money by the 2nd respondent to A1, it is their private affair and it has to be recovered in the manner known to law. But it is not known as to how this falls under Section 420 IPC. Admittedly the 1st and 2nd petitioners are parents of A1 and they are residing in Avaniyapuram. The 3rd petitioner / sister of A1 is living with her husband at Tiruvendram. A1 and the 2nd respondent are working in Chennai.

11.The respondent police have filed the final report without ascertaining the genuineness of the complaint. The purpose of the investigation is to find out the truth and after finding out the truth only, they have to file the final report. However the investigation agency appears to have filed the final report by just reproducing the first information report, without ascertaining the genuineness of the complaint.

12.Though this petition has been filed challenging the first information report and it is claimed that final report has been filed by e-filing, this Court is inclined to quash the FIR as the final report



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has not been taken on file. The learned Counsel for the petitioners has also relied on the judgment of the Hon'ble Supreme Court in SLP(Crl)No.7273 of 2019 dated 29.01.2024 wherein the Hon'ble Supreme has held that even if the charge sheet has been filed the Court can still examine, if offences alleged to have been committed were *prima facie* made out or not on the basis of FIR, charge sheet and other documents.

13.Apparently as against these petitioners there is no material, however final report has been filed as against these petitioners for the offence under Sections 420 and 506(ii) IPC. It is relevant to refer to these sections.

(i) Section 420 IPC is extracted hereunder:

"420.Cheating and dishonestly inducing delivery of property.—

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of



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either description for a term which may extend to seven years, and shall also be liable to fine.”

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The materials collected by the investigating agency do not attract any ingredient under Section 420 IPC. Therefore, no case is made out under this section.

(ii) Section 506 IPC is extracted as under:

“506. Punishment for criminal intimidation —

Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

*If threat be to cause death or grievous hurt, **etc.**— and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”*

The complaint was lodged on 11.01.2024 that she was criminally intimated during the month of July 2023. However there is no detail



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in the complaint as to when and where the petitioners have intimidated the 2nd respondent. If the defacto complainant really had felt the threat as projected by her in the complaint, she would not have waited till 11.01.2024 to lodge a complaint for the same. However a case has been registered under Section 506(ii) IPC and final report has also been filed simply by reproducing the first information report without collecting and verifying the details in this regard. Therefore the offence under Section 506(ii) IPC is also not made out.

14.In view of the foregoing discussion, this criminal original petition is allowed. The proceedings pending as against these petitioners in Crime No.5 of 2024 is hereby quashed. The learned Judicial Magistrate is directed to return the final report as against the petitioners. Consequently connected miscellaneous petition is closed.

Index :Yes/No
Internet : Yes/No

29.07.2024

DSK



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To

- 1.The Inspector of Police,
AWPS – Thallakulam,
Madurai.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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B.PUGALENDHI,J.

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