



Crl.O.P.(MD) No.19598 of 2021

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.02.2024

CORAM

THE HON'BLE MRS.JUSTICE R.HEMALATHA

Crl.O.P.(MD) No.19598 of 2021

and

Crl.M.P.(MD) No.10943 of 2021

1.R.Moshidhayan @ Pallavilai Rajesh

2.Dr.P.Sheeja

... Petitioners

Vs.

1.The State of Tamilnadu,
Rep. by the Inspector of Police,
Kanyakumari District Crime Branch
@ Nagercoil,
Kanyakumari District.

2.Jonesraj

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, 1973, to call for the records pertaining to the FIR in Crime No.28 of 2021 and quash the same against the petitioners herein.

For Petitioners : Mr.T.Cibi Chakraborty

For R1 : Mr.R.M.Anbunithi
Additional Public Prosecutor

For R2 : Mr.S.C.Herold Singh



Crl.O.P.(MD) No.19598 of 2021

ORDER

WEB COPY Seeking to quash the F.I.R. in Crime No.28 of 2021 of District Crime Branch @ Nagercoil, Kanyakumari District, the present Criminal Original Petition is filed.

2. The petitioners are the accused 1 and 2. The case of the prosecution in a nutshell is as follows:

(a) The petitioners/accused 1 and 2 promised the second respondent/*de facto* complainant, to secure a job as Professor in Women's Christian College (WCC), Nagercoil, Kanyakumari District and received a sum of Rs.5,00,000/- on various dates. According to the second respondent/*de facto* complainant, the petitioners/accused 1 and 2 had earlier informed him that they are close relatives of one former Minister of the State and also to Father Devakadasham, Bishop, Kanyakumari Diocese of the Church of South India (CSI) and believing their words, he parted with a sum of Rs.5,00,000/-. Whenever the second respondent/*de facto* complainant approached the petitioners/accused 1 and 2 with regard to the job, they evaded him. Thereafter, the first petitioner/accused 1 called the second respondent/*de facto* complainant over phone and abused him in filthy language and threatened him with dire consequences. The second respondent/*de facto* complainant approached the Inspector of Police, District Crime Branch @ Nagercoil,



WEB COPY



Crl.O.P.(MD) No.19598 of 2021

Kanyakumari District and lodged a complaint against the present petitioners/accused 1 and 2. The police after conducting the preliminary enquiry had dropped all further proceedings on the ground that the transaction between the present petitioners/accused 1 and 2 and the second respondent/*de facto* complainant is a simple money transaction and civil in nature. This closure report was made on 21.08.2014.

(b) Thereafter, the second respondent/*de facto* complainant approached the Judicial Magistrate Court No.I, Nagercoil and filed a private complaint under Section 200 of Cr.P.C. against the present petitioners/accused 1 and 2 as well as the Principal and the Correspondent of the Women's Christian College (WCC), Nagercoil, Kanyakumari District for the offences punishable under Sections 294(b), 120(b), 420 & 506(ii) of IPC. The learned Judicial Magistrate No.I, Nagercoil, Kanyakumari District *vide* orders dated 25.10.2021 in Crl.M.P.No.6995 of 2021 directed the District Crime Branch @ Nagercoil, Kanyakumari District to register F.I.R. and investigate the case. Accordingly, F.I.R. in Crime No.28/2021 was registered against the present petitioners/accused 1 and 2 and the Principal and the Correspondent of the College for the offences punishable under Sections 294(b), 120B, 420 & 506(2) of IPC. Subsequently, the District Superintendent of Police, Kanyakumari District transferred the investigation to the District Crime Records Bureau (DCRB), Kanyakumari District.



Crl.O.P.(MD) No.19598 of 2021

WEB COPY 3. Mr.T.Cibi Chakraborty, learned counsel for the petitioners/accused 1 and 2 would contend that the petitioners/accused 1 and 2 borrowed a sum of Rs.5,00,000/- from the second respondent/*de facto* complainant as a hand loan and promised to re-pay the same together with interest at 5% per annum and in this regard, a promissory note dated 08.01.2012 was executed. His further contention is that though on an earlier occasion, the District Crime Branch @ Nagercoil, Kanyakumari closed the complaint as the dispute between the petitioners/accused 1 and 2 and the second respondent/*de facto* complainant pertains to a simple money transaction, the District Crime Branch @ Nagercoil, Kanyakumari later registered F.I.R. in Crime No. 28/2021 only as per the directions of the learned Judicial Magistrate No.I, Nagercoil, Kanyakumari District.

4. His contention is that the counter foil of challan with which the cheques were deposited is fabricated as the Teller's signature is not in an appropriate place. He also drew the attention of this Court to the contradictions made in the earlier complaint filed by the second respondent/*de facto* complainant before the police and the private



Crl.O.P.(MD) No.19598 of 2021

complaint filed before the learned Judicial Magistrate No.I, Nagercoil, Kanyakumari under Section 200 of Cr.P.C. According to him, the second respondent/*de facto* complainant in his present complaint had exaggerated his earlier version and all the allegations contained in the complaint are false.

5. Per contra, Mr.S.C.Herold Singh, learned counsel for the second respondent/*de facto* complainant would contend that the second petitioner/accused 2 was actually working in the Women's Christian College (WCC), Nagercoil, Kanyakumari District and that the first and second petitioners jointly promised the second respondent/*de facto* complainant to get a job as a Professor in the said College. It is also his submission that the promissory note allegedly executed by the parties is dated 08.01.2012, whereas, the second respondent/*de facto* complainant handed over a sum of Rs.5,00,000/- way back in the year 2011. It is also his contention that the police have investigated the case and since an order of stay has been granted by this Court in the present Criminal Original Petition at the time of admission, they are unable to file the final report before the concerned Judicial Magistrate Court.



Crl.O.P.(MD) No.19598 of 2021

6. Mr.R.M.Anbunithi, learned Additional Public Prosecutor appearing for the first respondent filed a counter affidavit of the first respondent, wherein, in paragraphs 2 to 5, it is stated thus:

2. It is humbly submitted that the prosecution case is that the defacto complainant namely Jonesraj Son of Ponnaiyan (who is the 2nd respondent herein) preferred a complaint stating that during the year 2008 to 2012, his wife namely Benina working as temporary lecturer in the Tamil Department at Girls Christian College, Nagercoil, at that time she got some friendship with one Sheeja Wife of Pallavilai Rajesh @ Moshidhayan, further he stated that the said Sheeja told that her husband have much influence with the Ex. Minister Patchaimal and also have influence with Christian Thirusabai and promised to get permanent job at Women's Christian College Nagercoil and on believing their words the defacto complainant paid Rs. 2 Lakh through the said Sheeja's bank account on 05.04.2011 and on 12.07.2011 again he paid Rs. 3 lakhs in the same account. But later on the petitioners / accused herein and other accused persons colluded themselves did not get permanent job as promised by them further when the defacto complainant asked them to return his money they abused him with filthy languages and threatened him with dire consequences. Based on the



Crl.O.P.(MD) No.19598 of 2021

complaint a case was registered in Crime No. 28/2021 Under Section 294(b), 120(b), 420, 506(ii) IPC on the file of the 1st respondent police station and taken up for investigation.

3. I humbly submit that after registering the case the Inspector of Police, District Crime Branch, Kanyakumari District has conducted first investigation and enquired the defacto complainant and other witnesses, obtained their statement under section 161(3) Cr.P.C. Further during the investigation the accused persons / petitioners herein filed Anticipatory Bail petition before this Hon'ble Court in Crl.O.P.(MD) No. 13922/2021 and this Hon'ble Court by order dated 17.03.2022 granted anticipatory bail with the condition that the petitioners / accused Nos. 1 and 2 directed to deposit a sum of Rs. 5 Lakh before the Learned Judicial Magistrate No. 1, Nagercoil, Kanyakumari District to the credit of Crime No. 28/2021 within the period of 3 weeks from the date of receipt of a copy of the said order.

4. I humbly submit that aggrieved over the said order the petitioners / accused herein filed appeal before the Hon'ble Supreme Court of India in SLP (Civil) No. 4216/2022 and the same was dismissed by order dated 20.05.2022. Further during the investigation, the



Crl.O.P.(MD) No.19598 of 2021

investigation was transferred to me by the proceedings in C.No. 38/Camp/KKI/2023, Dated 15.04.2023 and after taking the investigation of the case, I once again enquired the witnesses and obtained their statement under section 161(3) Cr.P.C.

5. I humbly submit that in this case totally 4 persons were arrayed as accused namely 1. Moshidayan @ Pallavilai Rajesh, Son of Raji, 2. Sheeja, W/o, Moshdhayan @ Pallavilai Rajesh, 3. Nirmala Nallathambi, (Principal, Women's Christian College, Nagercoil) 4. Sundarraj, (Correspondent / Secretary Women's Christian College, Nagercoil) and the petitioners herein are Accused Nos. 1 & 2.

7. It is his submission that the investigation reveals that the present petitioners/accused 1 and 2 have committed offences punishable under Sections 294(b), 120(b), 420 & 506(ii) of IPC and the police would be filing final report soon.

8. The specific contention of the present petitioners/accused 1 and 2 is that a simple money transaction has been given a criminal colour in the present case. However, the promissory note dated 08.01.2012 shows that



Crl.O.P.(MD) No.19598 of 2021

the first petitioner/accused 1 for the purpose of purchasing a land in S.Nos.389/3 and 389/4 in Neendakarai 'A' Village, Rajiv Gandhi Nagar, Ilanthaiyadi measuring 22 Cents 887 Square Links borrowed a sum of Rs. 5,00,000/- from the second respondent/*de facto* complainant. In the very same promissory note, it is mentioned that a sum of Rs.5,00,000/- was obtained by the first petitioner/accused 1 as a hand loan from the second respondent/*de facto* complainant.

9. The present case pertains to handing over of Rs.5,00,000/- to the first petitioner and his wife on 05.04.2011 and 12.07.2011. Thus, it is clearly seen that the alleged promissory note dated 08.01.2012 is totally different from the present case transaction. In the initial complaint before the District Crime Branch @ Nagercoil, Kanyakumari District, the second respondent/*de facto* complainant had not elaborately narrated the entire incident. But, in the present complaint filed before the learned Judicial Magistrate No.I, Nagercoil, Kanyakumari District, he had narrated every single event cogently. It is for the police to investigate the same. At this stage, the contradiction found in the earlier complaint and the present complaint cannot be a ground to quash the entire F.I.R. Since it is contention of the Inspector of Police, District Crime Records Bureau



Crl.O.P.(MD) No.19598 of 2021

(DCRB), Kanyakumari District that there is a *prima facie* case against the present petitioners/accused 1 and 2, I do not find any reason to quash the FIR on the grounds raised by the present petitioners/accused 1 and 2. The genuineness of the counter foil with which cheques were deposited has to be investigated by the police during the course of investigation.

10. It is further seen from the records that the petitioners/accused 1 and 2 at the time of filing anticipatory bail petition before this Court in Crl.O.P.(MD) No.13922 of 2021 were directed by this Court to deposit a sum of Rs.5,00,000/- before the learned Judicial Magistrate No.1, Nagercoil, Kanyakumari District, to the credit of Crime No.28 of 2021 within a period of three weeks from the date of receipt of a copy of the said order and permitted the second respondent/*de facto* complainant to withdraw the 50% of the said amount, against which, the present petitioners/accused 1 and 2 filed S.L.P.(Civil) No.4216 of 2022 before the Hon'ble Supreme Court. The Hon'ble Supreme Court *vide* its orders dated 20.05.2022 dismissed the S.L.P. Till date, the petitioners/accused 1 and 2 had not deposited the said amount before the learned Judicial Magistrate No.1, Nagercoil, Kanyakumari District, to the credit of Crime No.28 of 2021.



Crl.O.P.(MD) No.19598 of 2021

11. As far as the contention of the learned counsel for the petitioners/accused 1 and 2 that the second petitioner/accused 2 is not involved in the present case is concerned, it is the case of the prosecution that the amount was credited in the account of the second petitioner/accused 2 as she was working in the said Women's Christian College, Nagercoil, Kanyakumari District and she has also allegedly promised the second respondent/*de facto* complainant to get the job in the said college and therefore, she is made as an accused in the present case. Therefore, I do not find any infirmity in this regard.

12. In the circumstances, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

02.02.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order

JEN

To
1.The Inspector of Police,
Kanyakumari District Crime Branch
@ Nagercoil,
Kanyakumari District.



Crl.O.P.(MD) No.19598 of 2021

2.The Inspector of Police,
Kanyakumari District Crime Records Bureau
@ Nagercoil,
Kanyakumari District.

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



WEB COPY



Crl.O.P.(MD) No.19598 of 2021

R.HEMALATHA, J.

JEN

Crl.O.P.(MD) No.19598 of 2021 and
Crl.M.P.(MD) No.10943 of 2021

02.02.2024