IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.18737 of 2023
and Crl.M.P.No.12481 of 2023

1. A.K.S @ Subramanian
2. Murugan ... Petitioners

Vs

1. The Inspector of Police,
   Vadalur Police Station,
   Cuddalore District.
   (Crime No.377/2022)

2. Ibramkan ... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C/ Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records of FIR in Crime No.377 of 2022 on the file of the first respondent and quash the same as devoid of merit.

For Petitioners	: Mr.V.Neethidurai
For R1	: Mr.R.Vinothraja Government Advocate (Crl.side)
For R2	: No appearance

ORDER

This petition has been filed to quash the First Information Report in Crime No.377 of 2022 on the file of the first respondent.

2. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.side) for the first respondent and perused the materials placed on record. Though notice served on the second respondent and the name has been printed in the cause list, today, no one appeared on behalf of the second respondent in person or through pleader.

3. The case of the prosecution is that the defacto complainant was engaged in a hardware business and had borrowed a sum of Rs.1,00,000/- on 12.03.2016 from the first petitioner at an interest rate for 15 paise, which he repaid. Subsequently, the defacto complainant is stated to have borrowed money from the petitioners on multiple occasions and repaid up to Rs.40,000/- in a single day, amounting in total to approximately Rs.2 Crores towards principal and interest. Due to business losses, the defacto complainant closed his business. It is further alleged that on 22.09.2021 at around 02.00 p.m, the second petitioner visited the defacto complainant's house and demanded a sum of Rs.25,00,000/-, thereby abusing the defacto complainant in filthy language and forcibly took possession of the original sale deeds pertaining to the defacto complainant's shop and house. Hence, the complaint.

4. On receipt of the complaint, the first respondent registered FIR in Crime No.377 of 2022 for the offences punishable under Sections 294(b) and 506(i) of IPC and Sections 3 and 4 of TN Prohibition of Charging Exorbitant Interest Act, 2003.

5. Even according to the second respondent, he had borrowed a sum of Rs.40,00,000/- from the first petitioner for the interest at the rate of 1%. However, the second respondent failed to repay the same and on the strength of the promissory note, the first petitioner also filed a suit for recovery of money in O.S.No.350 of 2022, on the file of the Principal District and Sessions Judge, Cuddalore. On receipt of the notice in the suit, the second respondent lodged the present complaint alleging that the petitioners are claiming exorbitant interest.

6. Admittedly, the second respondent failed to comply with the provision under Section 5(1) of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003. In fact, if the loan amount is more than Rs.10,000/-, the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 would not at all attract. Even according to the second respondent, he

borrowed a sum of Rs.40,00,000/- with interest at the rate of 1% per month.

7. In this regard, it is relevant to extract the portion of the order passed by this Court in Crl.O.P.No.4877 of 2018 dated 26.06.2018 in the case of ***T.Karthikeyan and others Vs. The State rep by its Inspector of Police"*** , in which this Court held as follows:-

> *"10.The object of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, is to prohibit the charging of exorbitant interest by any person and matters incidental thereto. The scheme of the Act is to regulate and control collection of money in the name of daily vatti, hours vatti, kandhu vatti, meter vatti, thandal etc. As per the provisions of the Tamil Nadu Money Lenders Act, 1957, a money lender is a person whose main or subsidiary occupation is the business of advancing http://www.judis.nic.in and realising loans. Further, an advance made on basis of a negotiable instrument exceeding Rs.10,000/-, will not fall under the definition of a loan. Therefore, a money lender, who makes an advance, on basis of a negotiable instrument exceeding Rs.10,000/- is not a person referred to under Section 3 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003. In other words, the debtor cannot lawfully complain of a demand of exorbitant interest, when a money lender advances a loan on the basis of negotiable instrument exceeding Rs.10,000/-.*
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> *11. As per the provisions of the Tamil Nadu Money Lenders Act, a money lender is a person, whose main or subsidiary occupation is a business of advancing and releasing loan. In the instant case, the petitioners main occupation was transport business and it is nobody's case that their main and subsidiary business was money lending. Therefore, the term 'person' referred to in Section 3 of Tamil Nadu Prohibition of*

Charging Exorbitant Interest Act, 2003 and the term 'money lender' referred to therein are not applicable to the petitioners herein. Incidentally, the petitioners herein had produced various copies of their transport business pertaining to Port Trust Licence, Coir Board License, Export and Import License, Income Tax Returns etc., and established that their main business was not money lending. As such, the FIR implicating the petitioners for offences under Sections 3 and 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 is prima facie not made out.

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13.The basis of the complaint is that the petitioners herein had demanded exorbitant interest and it is in this connection that they had allegedly indulged in various criminal activities. When the offence under the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 has not been made out, what remains is a mere civil dispute between the petitioners and the defacto complainant since the amount borrowed as well as the non repayment of the same is not under dispute. It would not be out of place to mention here that under Section 51 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, it is mandatory that the debtor to deposit the loan amount together with interest at the rate fixed by the Government under Section 7 of the Act into the jurisdictional Court before presentation of the petition for recording satisfaction of the loan. This proposition has been reiterated in Indiabulls Financial Services Ltd., Vs. Jubilee Plots and Housing Private Limited reported in 2010 (2) LW 375 "24.In the considered opinion of this Court, the word 'may' used under Section 5(1) of the Act would imply the option given to a debtor to approach the court with a petition to refer full or part satisfaction of the loan with interest. Once a debtor exercises his option to approach the court for such a purpose, a debtor, who presents a petition, is bound to deposit the money in respect of the loan received by him together with interest.

Therefore, the expression 'may' employed under Section 5(1) does not mean by any stretch of imagination that *deposit of money while presenting a petition is always at the option of a debtor. If such an import is given to the aforesaid provision of law, no debtor would be inclined to deposit the loan amount with interest to get a relief within the time frame fixed under Section 5(2) of the Act. Consequently, it would be a mockery if the debtor, who has not chosen to show his bona-fides by depositing the money due in respect of the loan with interest, is permitted to seek for a remedy by just filing a petition. The provision under Section 5(2) of the Act speaks of an inquiry and passing of an order recording the satisfaction of the loan and interest therefore in full or part. If the amount due in respect of the loan with interest therein is not deposited as contemplated under Section 5(1) of the Act, the court may not be in a position to record in full or part satisfaction of the loan."*

8. Therefore, no offence under Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 is attracted as against the petitioner. That apart, after receipt of the summon in the suit filed by the first petitioner for recovery of money, the second respondent filed the complaint, only to escape from the clutches of law.

9. In view of the above, the impugned FIR cannot be sustained as against the petitioners and is liable to be quashed. Accordingly, the FIR in Crime No.377 of 2022, on the file of the first respondent is hereby quashed.

10. In the result, this Criminal Original Petition is allowed.

Consequently, connected Miscellaneous petition is closed.

17.04.2025

Internet:Yes
Index:Yes/No
Speaking/Non speaking order
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G.K.ILANTHIRAIYAN. J,

mn

To

1. The Inspector of Police,
   Vadalur Police Station,
   Cuddalore District.

2. The Public Prosecutor,
   High Court, Madras.

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