(2009) 08 MAD CK 0469

In the Madras High Court

Case No : Criminal O.P. No. 16209 of 2007 and M.P. No. 1 of 2007

Manoj Kumar Lulla APPELLANT

Vs

The State of Tamil Nadu and V. Vijayakumar RESPONDENT

Date of Decision : 03-08-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 160, 91
Penal Code, 1860 (IPC) — Section 420, 506, 506(2)

Citation : (2009) 08 MAD CK 0469

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : P.R. Raman, for the Appellant; R. Muniappa Raj, Government Advocate for Respondent-1 and G.K. Sekar, for Respondent-2, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The petitioner has filed the above Criminal Original Petition No. 16209 of 2007 to call for the Records in FIR in Crime No 3 of 2007 dated 14.5.2007 on the file of the 1st Respondent and quash the same.

2. The petitioner submitted in his complaint that he has received a notice dated 29.5.2007 addressed to his late father, and himself, from the Inspector of Police, Economic Offenses Wing St. Thomas Mount, Chennai, dated 28.5.2007 under Sections 160 and 91 Cr.P.C. The petitioner was asked to appear before the first Respondent on 31.5.2007 at 10.30 a.m. The notice required that the petitioner and his late father to bring the following documents namely (a) any agreement between the petitioner and his father on one side and the 2nd respondent on the other (b) cheque, DD and partnership dead.

3. After the receipt of the first Respondent''s notice, the petitioner was represented by his counsel before the first respondent. Then it was found that the FIR had been lodged by the second Respondent before the first Respondent accusing the petitioner and his late father for offences under Sections 420 and 506(2) of I.P.C.

4. After getting the FIR copy, the petitioner has alleged that the FIR is false and baseless. As per the allegations in the FIR, the petitioner and his father had approached the second respondent on 4.1.2005 for financial assistance for an alleged Chit Fund business. The second respondent parted with Rs. 62 lakhs and the same was not repaid. After negotiations, the petitioner and his father promised a bungalow type residence to the second respondent as settlement. As this was not done, the second respondent again approached the petitioner and his father, when the petitioner threatened the second respondent that he would engage rowdies to eliminate his family members. Subsequently, the rowdies approached the second respondent as well as called him over the phone and threatened to murder him. The second respondent feared for his life and that of his family members and so has lodged a complaint with the first respondent.

5. Further, the petitioner contended that neither has the second respondent appeared before the first respondent to substantiate his claim nor does the FIR even referred to documents in support of the second respondents allegations.

6. Further, the occurrence, of the alleged offences, is stated in the FIR, to have occurred on 4.1.2005 long after the death of the petitioner''s father, the complaint, has been filed by the second respondent before the first respondent on 17.4.2006. The reason for the delay is squarely attributed to the second respondent in the FIR. It also appears that the second Respondent has approached this Court in Criminal Original Petition No. 7231 of 2003. By order dated 20.3.2007, the first respondent has been directed to register FIR. It is pertinent to add here that the petitioner was not impleaded as a respondent in the said Criminal Original Petition. The petitioner further submitted that there has been no such transactions as alleged by the second respondent in his complaint and relevantly, neither the petitioner nor his late father have ever been engaged in Chit fund business. In April 2006, 3 envelopes were delivered at the petitioner''s address and his mother. The envelopes were empty. The petitioners father was no more, and this fact was suppressed before the Court and also before the first respondent by the second respondent.

7. On the basis of the complaint given by the Defacto complainant, i.e., the second respondent herein, the first respondent registered a case stating that the petitioner and his father received Rs. 62 lakhs for his chit fund business, and that the said amount was not repaid and hence negotiation was conducted, and that in its conclusion the petitioner had agreed to provide a house, and as this was not done, the petitioner had cheated the second respondent. Subsequently, the petitioners had threatened the second respondent for his life. This complaint also has been registered on the strength of order passed by this Honourable Court in Criminal Original Petition No. 7231 of 2003 dated 20.3.2007.

8. The second respondent herein filed his counter statement and narrated his case that he has a good financial background, that the father of the petitioner approached him as if he has plots at Anna Nagar, Chennai which had been allotted by the Tamil Nadu Housing Board. Further, the petitioner''s father was a

big industrialist and had registered office at Royapattah. The petitioner''s father requested the second respondent to give Rs. 30 lakhs. On the basis of agreement, the amount was paid by the second respondent. As per agreement, the respondent became a partner of one Kalyanamandapam at Anna Nagar. Subsequently, a dispute arose between the second respondent and the petitioner regarding the said transaction.

9. Further, on 24.3.2002, the father of the petitioner had received Rs. 22 lakhs, thereafter on 9.5.2003 had received Rs. 4.75 lakhs, and on 29.3.2003 had received Rs. 2.25 lakhs from the second respondent. All these said money transactions had happened on the basis of the business and construction of Kalyanamandapam and on provision of a house to the second respondent. This was not done by the petitioners. But the second respondent believed the petitioners and released the fund to the petitioners. Finally the petitioners had cheated the second respondent with malafide intention. Further, the petitioners had engaged goondas and threatened the second respondent in connection with the dispute. This has been the allegation of the second respondent herein in his counter.

10. Considering the contentions of the petitioner, second respondent, counter statements and arguments of the Learned Counsel for the petitioners, Learned Counsel for State and Learned Counsel for second respondent, the Court is of the view, that as per direction of this Honourable Court in Criminal Original Petition No. 7231 of 2003, the case was registered as Crime No. 3 of 2007, under Sections 420 and 506(ii) of IPC. Further, the case has to be tried necessarily in the interest of Justice. Hence, the Criminal Original Petition No. 16209 of 2007 has got to be dismissed and accordingly, dismissed. Consequently, connected Miscellaneous Petition is closed.