



Crl.O.P.(MD)No.6607 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on: 14.07.2023

Delivered on: 04.08.2023

CORAM

THE HON'BLE MR.JUSTICE P.DHANABAL

Crl.O.P.(MD)No.6607 of 2019

and

Crl.M.P.(MD)No.4414 of 2019

Rajendran

... Petitioner

Vs.

Chandramohan

... Respondent

Prayer : Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the proceedings in C.C.No.58 of 2017 on the file of the Judicial Magistrate No.I, Madurai as against the petitioner concerned.

For Petitioner : Mr.C.M.Arumugam

For Respondent : Mr.J.Karthikeyan

ORDER

This criminal original petition has been filed to quash the proceedings in C.C.No.58 of 2017 on the file of the Judicial Magistrate No.I, Madurai as against the petitioner concerned.



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2. According to the petitioner, he was arrayed as first respondent in the private complaint in C.C.No.58 of 2017 pending on the file of the learned Judicial Magistrate No.I, Madurai. The respondent herein filed the above said complaint alleging that in the year 2012, he borrowed a sum of Rs.20,00,000/- from the petitioner for his business development and in lieu of the receipt of the said amount, he executed a registered mortgage deed by depositing title deeds of his residential property. Further allegation is that the petitioner insisted to pay interest at the rate of 24%. However, the respondent herein agreed to pay interest at the rate of 12% and the same was also accepted by the petitioner. Further alleged that on 11.08.2012, the respondent paid Rs.60,000/- towards part of principal and interest and he obtained signature for the receipt of the money and the second accused made entry in a small pocket note book. Thereafter, in the month of January 2015, he handed over the original pocket note book and on 11.02.2015, the second accused has made an endorsement for the receipt of the said amount. However, the second accused demanded exorbitant interest at the rate of 36% per annum. Though the respondent so far paid Rs.19,80,000/-, he was threatened on 16.05.2015 and 21.05.2015 and obtained a sum of Rs.3,00,000/- each from him by



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intimidating the respondent. Thereafter, he lodged a complaint before the Inspector of Police, Theppakulam Police Station on 23.05.2015. But no action was taken. Hence, he filed a petition before this Court in Crl.O.P.(MD)No.10080 of 2015 and a direction was given to enquire the complaint of the respondent. Further case of the respondent is that the police closed his complaint and hence, he filed private complaint.

3.According to the petitioner, the complaint is not maintainable, since the petitioner is the secured creditor. The respondent is duty bound to make repayment to the petitioner. The learned trial Judge ought not to have taken cognizance of the impugned complaint as the right forum to decide the issue is the competent civil Court only. This false complaint is not maintainable, since civil suit is pending for recovery of money as against the respondent herein. Therefore, filing of private complaint by the respondent is pure abuse of process of law and the same is liable to be quashed.

4.The learned counsel appearing for the petitioner would contend that the respondent borrowed a sum of Rs.20,00,000/- from the petitioner and executed registered mortgage deed. As per



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mortgage deed, interest fixed as Rs.1.50/- per Rs.100 per month. If the respondent breaches the condition in paying interest, then, he has to pay interest as Rs.2/- for Rs.100 per month. Therefore, question of charging exorbitant interest would not arise at all and the petitioner being creditor, already filed civil suit before the competent civil Court for recovery of money. While being so, with the false allegations, the respondent filed the present complaint for the offences under Sections 120(B), 406, 420 and 506(i) IPC and Section 4 of the Prohibition of Charging Exorbitant Interest Act. Since the petitioner is secured creditor, question of charging him under Sections 406, 420 IPC would not arise. As far as the offence under Section 120(B) IPC is concerned, there is no conspiracy, even as per the complaint. As far as the offence under Section 506(i) IPC is concerned, the same is created for the purpose of filing this complaint. Therefore, without considering the above said facts, the learned Magistrate had taken cognizance as against the petitioner. Hence, the private complaint is liable to be quashed.

5.The learned counsel appearing for the respondent would contend that the respondent obtained loan from the petitioner and his son, who is arrayed as second accused in this case, through one Palanisamy, who is arrayed as third accused in this case. On



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11.07.2012, the respondent obtained loan from the petitioner herein and also agreed to pay interest at the rate of Rs.1.50/- per Rs.100/- per month. The respondent also executed mortgage deed in favour of the petitioner and the original sale deed also handed over to him. As per the mortgage deed, the respondent paid Rs.30,000/- for interest and Rs.30,000/- for principal amount to the second accused in the presence of the petitioner herein and the same was also endorsed in a small note book as interest. When the respondent asked about the same, he replied that though it was paid towards principal as well as interest, for the sake of account, they endorsed in the note book as interest and they also assured that after payment of Rs.30,000/- per month towards principal, they will release the original document. Believing the words of the petitioner and other accused, the respondent periodically paid Rs.60,000/- per month, continuously for 32 months. Thereafter, in the month of April, 2015, the respondent paid Rs.60,000/- towards principal as well as interest. After receipt of the said amount, they demanded excess interest at the rate of Rs.3/- per Rs.100/- per month. Further, they demanded principal amount of Rs.20,00,000/- with 1% interest and the amount already paid by the respondent was adjusted only for interest at the rate of Rs.3/- per Rs.100/- per month. Therefore, the accused persons breached the contract and



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they have demanding kanthu vatti. While facts are being so, on 16.05.2015, all the accused persons forcibly taken the victim to the finance company situated near Tamil Sangam Road water tank, which was belonged to the second accused's friend and threatened the respondent to pay Rs.20,00,000/- and interest. Thereafter, the respondent arranged Rs.3,00,000/- and informed the same to the accused persons. At that time, the petitioner herein asked him to come Harris Bakery, which is situated opposite to the Alangar theatre and the respondent also went there with Rs.3,00,000/-, on 21.05.2015. All the accused persons received the amount, however, no endorsement was made and they threatened the respondent by stating that if the respondent paid the entire amount, they will make endorsement in the note book. Since the petitioner and other accused persons caused criminal intimidation by demanding kanthu vatti, he lodged complaint before the police. However, the police have not taken any steps and therefore, the respondent filed a petition before this Court in Crl.O.P.(MD) No.10080 of 2015. Even after a direction of this Court, the police closed the complaint stating that there is money dispute between the parties. Thereafter, the petitioner herein filed O.S.No.101 of 2015 before the V Additional District Court, Madurai against the respondent. Therefore, the respondent filed private complaint



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before the learned Judicial Magistrate No.I, Madurai. Based on the complaint, the learned Magistrate has taken cognizance for the offence under Sections 120(b), 406, 420 and 506(i) IPC and Section 4 of the Prohibition of Charging Exorbitant Interest Act. The learned Magistrate has taken cognizance only based on the prima facie materials. At this stage, this petition is not maintainable and the same is liable to be dismissed.

6.Heard both sides and perused the materials available in the record.

7.In this case, admittedly, the respondent herein had executed mortgage deed in favour of the petitioner herein, after receipt of a sum of Rs.20,00,000/-. The main contention of the respondent is that the petitioner and other accused persons demanded more interest than the agreed amount. According to the respondent, the agreed interest is Rs.1.5/- per Rs.100/- per month. But the accused persons demanded interest at the rate of Rs.3/- per Rs.100/- per month. Even according to the respondent, already he executed mortgage deed by agreeing to pay interest at the rate of Rs.1.5/- per Rs.100/- per month. He has to get receipt for the amount. There is recitals in the mortgage deed with regard to the



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payment of interest. The respondent has to pay interest on every 5th day of English calendar month at the rate of Rs.1.5/- per Rs. 100/- per month. Time is also fixed for repayment of principal amount as one year. If any default in payment of interest, then, the respondent has to pay interest at the rate of Rs.2/- per Rs.100/- per month. While facts are being so, there is no reference in the complaint as to why the respondent did not get receipt for payment of amount and made endorsement in the mortgage deed and also why he paid principal amount on installment basis.

8.Further, even according to the complaint, there is no averments as against this petitioner with regard to the conspiracy and also there is no averments with regard to the cheating as per Section 420 IPC. As far as Section 406 IPC is concerned, there is no averments that the petitioner committed breach of trust. As far as Section 506(i) IPC is concerned, there is no averments that the petitioner caused criminal intimidation. Even according to the complaint, the allegations are not in specific and no specific date was mentioned by the respondent as regards the criminal intimidation caused by the petitioner and other accused persons. As far as Section 4 of the Prohibition of Charging Exorbitant Interest Act is concerned, it is admitted by the respondent that he



paid interest on monthly basis to the son of the petitioner and he only made endorsement in the note book. It is relevant to extract Sections 2 and 4 of the Prohibition of Charging Exorbitant Interest Act:

2.In this Act, unless the context otherwise requires,-

(1).....

(2)"debtor" means a person who receives loan for exorbitant interest;

(3)"exorbitant interest" means and includes daily vatti, hourly vatti, kandhu vatti, meter vatti and thandal;

(4)....

(5)"kandhu vatti" means an interest which will work out to an interest rate more than that - fixed by the Government under section 7 of the Money-lenders Act;

(6)"loann means an advance of money for daily vatti, hourly vatti, kandhu vatti, meter vatti or thandal;

(7)....

(8)"Money-lenders Act" means the Tamil Nadu Money-lenders Act, 1957;

4.Notwithstanding anything contained in the Money-lendings Act, whoever contravenes the provisions of section 3 or molests or abets the



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molestation of any debtor for recovery of any loan shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to thirty thousand rupees.

9.As per Section 2(3), exorbitant interest means and includes daily vatti, hourly vatti, kandhu vatti, meter vatti and thandal. In this case, the allegation is that the petitioner demanded kandhu vatti. As per Section 2(5), kandhu vatti means an interest which will work out to an interest rate more than that fixed by the Government under Section 7 of the Money Lenders Act. It is relevant to extract Section 7 of the Money Lenders Act:-

7.No money –lender shall charge interest on any loan at a rate exceeding Interest such rate as the Government may, by notification, fix from time to time

Provided that the rate of interest as may be fixed by the Government shall be correlated to the current bank rates of lending as may be fixed by the Reserve Bank of India, from time to time

As per Section 7 of the Money Lenders Act, the Government may by notification fix the rate of interest from time to time and as per provision the rate of interest fixed by the Government shall be correlated to the bank rates of lending as may be fixed by RBI from time to time. Therefore, in order to prove kandhu vatti, the defacto



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complainant has to establish that the interest demanded by the petitioner is exceeding the interest rate fixed by the Government and RBI. But no records are available to establish a prima facie case of kandhu vatti.

10.Further it is admitted fact that civil suit is pending between the parties for recovery of money based on the mortgage deed. In the said mortgage deed rate of interest was fixed and the same has to be decided by the civil Court. There is no allegation made by the respondent that the petitioner from the inception of mortgage deed, they had intention to cheat the respondent. It is well settled law that in order to attract offence under Section 420 IPC, there must be an intention to cheat from the inception. But, this matter is purely civil in nature and thereby, without sufficient materials as against this petitioner, the learned Magistrate has taken cognizance and the same is not sustainable.

11.Further, the learned counsel appearing for the petitioner relied upon the judgment of the Hon'ble Supreme Court of India reported in **CDJ 2001 SC 644** in a case of **S.W.Palanitkar Vs. State of Bihar** wherein, the Hon'ble Supreme Court held in paragraph No.27 as follows:



The approach and considerations while exercising power and jurisdiction by a Magistrate at the time of issuing process are to be in terms of Sections 200 to 203 under Chapter XV of Cr.P.C., having due regard to the position of law explained in various decisions of this Court, and whereas while exercising power under Section 482 of Cr.P.C. the High Court has to look at the object and purpose for which such power is conferred on it under the said provision. Exercise of inherent power is available to the High Court to give effect to any order under the Cr.P.C., or to prevent about of the process of any court or otherwise to secure the ends of justice. This being the position, exercise of power under Section 482 Cr.P.C. should be consistent with the scope and ambit of the same in the light of the decisions aforementioned. In appropriate cases, to prevent judicial process from being an instrument of oppression or harass-ment in the hands of frustrated or vindictive litigants, exercise of inherent power is not only desirable but necessary also, so that the judicial forum of court may not be allowed to be utilized for any oblique motive. When a person approaches the High Court under Section 482 Cr.P.C. to quash the very issue of process, the High Court on the facts and circumstances of a case has to exercise the powers with circumspection as stated above to really serve the purpose and object for which they are conferred.



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12.Further, he relied upon the judgment of this Court reported in **2003 (2) CTC 270** in a case of ***M/s.Pasumai Irrigation Limited Vs. M/s.Mansi Finance (Chennai) Limited*** wherein this Court held in paragraph Nos.13 and 14 as follows:

13. The next vital question that surfaces for consideration is the forum in which the ordinary jurisdiction lies for such complaints to be lodged, which is undoubtedly the police and not the Magistrate's court as it has been wrongly chosen by the respondent but readily accepted by the Magistrate, both of which cannot be said to be proper. It could be understood if the respondent has filed the private complaint before the Magistrate's court after his complaint before the police was either refused to be registered or having entertained the complaint, the respondent police referred to case on grounds such as 'mistake of fact of law' or 'undetectable' or 'civil in nature' etc. in which event the Magistrate's court entertain such complaints, but it cannot usurp the jurisdiction of the police just for the simple reason that it is empowered to entertain the private complaint.

14.Moreover, an irregularity was committed on the part of the Magistrate's Court in entertaining such matters of civil jurisdiction where in the subject



matter is based on a contract of civil agreement or money transactions in execution of pronotes, bond, issuance of cheques etc., in which event, only the Civil Court is having competent jurisdiction to entertain and decide the dispute and once the civil jurisdiction is open for such disputes, no criminal complaint could be lodged either with the police or with the Magistrate nor could it be entertained unless the police or the Magistrate concerned is personally interested in such matters or for personal gains so as to usurp the civil jurisdiction in misuse of the power given to them by law.

13. On careful reading of the above said judgments, it is clear that in matters of civil jurisdiction wherein subject matter is based on contract or civil agreement or money transaction, execution of pro-notes, bond, cheques, etc., only civil Court is having competent jurisdiction to entertain and decide the same. In the case on hand also it is admitted fact that civil suit is pending and mortgage deed also executed and the respondent also admitted the execution of mortgage deed and payment of interest. Therefore, the above said case laws are squarely applicable for the present case.



14.The learned counsel appearing for the respondent also relied upon the judgment of the Hon'ble Supreme Court of India reported in 2001 (7) Supreme 627 in a case of Kamaladevi Agarwal Vs. State of West Bengal & Others wherein, the Hon'ble Supreme Court held that the High Court is not justified in quashing the proceedings initiated by the appellant against the respondent on the ground that as the civil suit is pending in the High Court, the magistrate is not justified to proceed with the criminal case. The relevant portion of the judgment is extracted hereunder:

17.In view of the of authorities to the contrary, we are satisfied that the High Court was not justified in quashing the proceedings initiated by the appellant against the respondents. We are also not impressed by the argument that as the civil suit was pending in the High Court, the Magistrate was not justified to proceed with the criminal case either in law or on the basis propriety. Criminal cases have to be proceeded with in accordance with the procedure as prescribed under the Code of Criminal Procedure and the pendency of a civil action in a different court even though higher in status and authority, cannot be made a basis for quashing of the proceedings.



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15.On careful reading of the above said judgment, shows that the same is not applicable to the present facts of the case, since the ratio is distinguishable from the facts of this case. Therefore, in view of the above discussions, this Court is inclined to quash the private complaint pending before the learned Judicial Magistrate No.I, Madurai in C.C.No.58 of 2017 as against this petitioner. Accordingly, private complaint in C.C.No.58 of 2017 pending on the file of the learned Judicial Magistrate No.I, Madurai is quashed as against the petitioner.

16.In the result, this criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

04.08.2023

NCC : yes/No
Index : yes/No
Internet : yes/No
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To

The Judicial Magistrate No.I,
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P.DHANABAL, J

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