THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL PETITION No.7969 OF 2013

ORDER:

This Criminal Petition is filed under Section 482 of Cr.P.C. by A.1 to A.4 seeking to quash the proceedings against them in Crime No.96 of 2013 on the file of Panjagutta Police Station, Hyderabad registered for the offences punishable under Sections 406, 420, 506 and 120-B of IPC.

The facts of the case are as follows:

A.1 is M/s.Kamdhenu & Company, a partnership firm and A.2 to A.4 are the partners. A.2 to A.4 approached the complainant-second respondent (Bajaj Finance Limited) on 2.4.2011 for obtaining loan for carrying on the business of A.1 and that they agreed to create equitable mortgage over their property i.e. H.No.8-2-6/6/6/2/1, Road No.11, Banjara Hills, Hyderabad. But, however, they failed to submit the title deeds thereof and later, they submitted title deeds of some other property i.e. H.No.3-5-45 (Eastern part), Ramkoti, Hyderabad and accordingly, the complainant issued sanction letter on 28.8.2011 and after the petitioners accepting the terms and conditions, loan amount of Rs.2,56,00,000/- and Rs.1,30,00,000/- and the amount was disbursed to them on 30.8.2011. According to the agreement, repayment of loan is to be made in 180 monthly instalments, each of Rs.3,07,244/- and Rs.1,52,305/- respectively. However, the petitioners failed to repay the amount as agreed and the complainant issued demand notice dated 22.8.2012 and 24.8.2012 demanding the petitioners to deposit the dues for the loan followed by reminders, but the petitioners failed to pay the same and thereby they committed the offences as alleged.

The main contention raised by the learned counsel for the petitioners is that the entire transaction between the de facto complainant and the petitioners is purely civil in nature. It is further submitted that the petitioners are not disputing the fact that they availed loan by way of mortgaging the property. Further ever since the date of agreement, the petitioners intended to repay the loan amount and in their effort, so far, they have paid Rs.80.00 lakhs, but however, they could not pay the remaining loan amount in view of the fact that the business carried on by them could not be proceeded for various reasons. It is further submitted that even after filing of the present complaint, on the same set of facts in respect of the same loan transaction, arbitration proceedings were initiated against the petitioners in Arbitration Proceedings No.5 of 2012 and the same was disposed of on 21st February, 2013 with the following directions:

"i. The Respondent nos.1 to 4 are directed to pay dues of Rs.3,85,06,292/- to the Claimant company along with interest @ 12% p.a. from the date of demand notice i.e. mandate of arbitration till the date of award and at the rate of 12% p.a. from the date of award till actual payment;

ii. The Respondent Nos.1 to 4 are directed to pay above dues along with future interest within a period of three months from the date of this award;

iii. The Respondents are directed to pay an amount of Rs.1,00,000/- by way of cost of this proceeding;

iv. In case the Respondents fail to repay outstanding dues along with interest within time stipulated, the Claimant company is entitled to recover the dues by way of sale of mortgage property House No.3-5-45 eastern part admeasuring 240.3 sq.yds., Eden Garden Road, Ramkote, Hyderabad in a execution proceeding."

Subsequent to passing of the award in the arbitration proceedings, in an effort for repayment of the loan amount, the petitioners entered into a tri-party agreement with the de facto complainant and also with the persons those who are interested in purchasing the mortgaged property and in terms thereof, the petitioners also entered into an agreement of sale with the prospective purchasers on 29.5.2013 and that they also executed a memorandum of understanding on the same date with the de facto complainant for clearing the entire dues. In the said memorandum of agreement, it is accepted and agreed that the entire balance of loan amount would be repaid on 5th of July, 2013 and on payment of the same, all the legal proceedings should be withdrawn by the lender-complainant.

Heard the learned counsel for the petitioners, learned Additional Public

Prosecutor and learned counsel appearing for the second respondent. Perused the material available on record.

As seen from the record, the entire transaction between the petitioners and complainant is purely a financial transaction and also of civil in nature. The learned counsel appearing for the second respondent-de facto complainant submitted that the petitioners herein misrepresented the complainant that they could run the business successfully and also make the complainant to believe that they would repay the loan amount posing themselves that they are doing the business successfully and that for expansion of business, they were availing the loan. Believing their words, the complainant has advanced the loan amount. In support of his contentions, the learned counsel for second respondent relied on the decisions in **B.L.Dalmia and others v. State of Haryana; Ajai Kumar Tomar v. Raj Narain and others; and Eng. Rui A.F.Ribeiro De Santana v. J.R. Rod Rigues**. This Court perused the said decisions. The facts and circumstances elaborated in the said decisions are totally different than that of the facts and circumstances of the present case.

Even a plain reading of the entire complaint and also the facts of the case, would disclose that the petitioners availed the loan from the complainant by submitting an application on 2.4.2011. Further they entered into loan agreement with the complainant on 28.8.2011. A copy of sanction of letter is also filed before this Court. That apart, subsequent documents such as agreement of sale and memorandum of agreement entered by the petitioners and complainant with intending purchasers of the mortgaged property are produced before this Court. Though the said documents are subsequent to the loan transaction, the fact remains that the complainant advanced the loan amount to the petitioners based on the mortgage deed executed by the petitioners in favour of the complainant. But at no stretch of imagination, the facts and circumstances narrated in the complaint, does not disclose that the petitioners, at any point of time, intended to cheat the complainant and that they have any intention of deception at inception. Further during the course of repayment of loan amount also, the petitioners have issued cheques and the same were returned for 'insufficient funds'. Under those circumstances, this Court is of the view that prima facie the allegations in the complaint does not disclose any offence against the petitioners herein much less the offences alleged therein. Hence, this Court is of the view that the impugned proceedings are liable to be quashed.

In the result, the Criminal Petition is allowed and the impugned proceedings in Crime No.96 of 2013 on the file of Panjagutta Police Station, Hyderabad are hereby quashed as against the petitioners herein.

Consequent thereto, the Miscellaneous Petitions, if any, shall stand closed.

JUSTICE RAJA ELANGO

07.09.2015

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