IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2016

CORAM:

THE HON'BLE MR.JUSTICE R.SUBBIAH

Crl.O.P.No.32036 of 2013
and
M.P.Nos.1 & 2 of 2013

1.Krishnamoorthy
2.V.Suburaj
3.V.Ramkumar ... Petitioners/Accused Nos.A3, A4 & A5

Vs.

1. State rep. by the Inspector of Police,
East Police Station,
Pollachi, Coimbatore District.

2. P.Mohan Kumar ... Respondents/Complainants

Prayer: Petition filed under Section 482 of Cr.P.C., praying to call for the records in C.C.No.182 of 2013 on the file of the learned Judicial Magistrate No.1, Pollachi and to quash the same.

For Petitioner : Mr.A.Thiyagarajan

For Respondent : Mr.C.Emalias,
Additional Public Prosecutor(For R1)
Mr.A.Ramesh, Senior Counsel
for Mr.V.Vijaykumar (For R2)

ORDER

This petition has been filed by the petitioners praying to quash the criminal proceedings in C.C.No.182 of 2013 pending on the file of the learned Judicial Magistrate No.1, Pollachi, as against the petitioners herein, who have been arrayed as Accused 3 to 5 respectively in this case.

2.The brief facts of the case are as follows-

2-1.The petitioners herein are the officials of the State Bank of India, Pollachi Branch. The 1st petitioner/A3 is the Deputy Manager Advance-cum-Field Officer. The 2nd petitioner/A4 is the Manager DBD. The 3rd petitioner/A5 is the

Assistant General Manager, Region IV, SBI CBE Sanction Officer.

2-2.The complaint was lodged by the 2nd respondent herein against the accused persons and the same was registered in Crime No.879 of 2011 on the file of the 1st respondent-Police. On completion of investigation, chargesheet was filed and the same was taken on file as C.C.No.182 of 2013 on the file of the learned Judicial Magistrate No.I, Pollachi, for the alleged offences punishable under Sections 467, 468, 471, 109, 149, 417, 420, 409, & 120(b) IPC.

2-3.The 2nd respondent/defacto-complainant is the brother-in-law of the 1st accused Jeyaprakash (A1's wife's brother). On 30.01.2003, the 1st accused applied for loan with the State Bank of India, Pollachi Branch, for a sum of Rs.59 lakhs, by way of mortgaging his property and the property of the defacto-complainant was also shown as security for the said loan amount. The 1st accused applied for the said loan for the purpose of setting up an amusement park christened as "Thrill Park" at Aliyar. The 2nd accused C.V.Mohan Prakash, who is none other than the own brother of the 1st accused Jeyaprakash, has been working in the State of Bank of India, Vellore Branch. It is the duty of the 1st petitioner herein/A3 to inspect the property to be mortgaged by the person, who is availing loan, and to issue a certificate with regard to the genuineness of the title documents of the property. It is the duty of the 2nd petitioner/A4 to verify the documents and recommend for loan. Thereafter, the 3rd petitioner/A5 has to scrutinise the documents and disburse the loan amount.

2-4.It is the case of the prosecution that the petitioners herein, who are the bank officials, without properly scrutinising the title documents and without properly verifying the payments said to have been made by the principal borrower/A1 for the supply of equipments, had sanctioned the loan amount of Rs.59 lakhs. The 2nd respondent/defacto-complainant had offered his property viz., PRM Complex, No.133/199, Pollachi, Coimbatore, as security for the said loan amount, as a guarantor. The 1st accused made the defacto-complainant to offer his property as security for his loan, with the collusion of the other accused viz., petitioners herein, by falsely representing that even if there is any default in repayment, the Bank will initiate action only as against the property of the borrower/A1 and not against the guarantor/defacto-complainant. Believing the words of the accused persons, the defacto-complainant offered his property as security for the loan amount. Subsequently, the 1st accused has defaulted in repaying the loan amount. But, the Bank initiated proceedings under SARFAESI Act as against the property of the defacto-complainant also and subsequently, the property of the defacto-complainant was sold in auction. Hence, the defacto-complainant lodged the complaint and it was registered in Crime No.879 of 2011 by the 1st respondent-

Police. On completion of investigation, on 13.09.2013, the 1st respondent-Police filed the chargesheet and it was taken on file as C.C.No.182 of 2013 on the file the learned Judicial Magistrate No.I, Pollachi, for the alleged offences under Sections 467, 468, 471, 109, 149, 417, 420, 409 & 120(b) IPC. Now, the petitioners have come forward with the present petition seeking to quash the criminal proceedings as against them.

3.Heard the submissions made by the learned counsel for the petitioners, the learned counsel for the 2nd respondent and the learned Additional Public Prosecutor and perused the materials available on record.

4.It is submitted by the learned counsel for the petitioners that the 2nd respondent/defacto-complainant is none other than the brother-in-law of the 1st accused. The 2nd accused, who is the brother of the 1st accused, is working in the State Bank of India, Vellore Branch. The petitioners herein, who are the officials of the State Bank of India, are responsible for verifying the documents and sanctioning loan amount. But, it is alleged that in collusion with the other accused person, without properly verifying the title deeds offered by the principal borrower/A1, without properly scrutinising the payments made by the borrower/A1 for the equipments, the petitioners herein had sanctioned the loan amount of Rs.59 lakhs to the 1st accused. It is the further case of the prosecution that at the time of applying for the loan, the 1st accused requested the 2nd respondent herein, being his brother-in-law, to stand as guarantor for his loan. Further, the 1st accused had stated that he had offered his property as principal security for his loan and the 2nd respondent's property would be only an additional security. It had been further represented by the 1st accused to the 2nd respondent that even if there is any default in repayment, the Bank will initiate action only as against the property of the principal borrower/A1 and not against the property of the guarantor/defacto-complainant. Hence, believing his words, the 2nd respondent stood as guarantor for the said loan. Thereafter, the 1st accused defaulted in making the repayment. Thus, the 1st accused had deceived the 2nd respondent and committed an offence under Section 417 IPC. The 1st accused has committed an offence under Section 420 IPC against the State Bank of India, since knowing fully well that he neither had the eligibility nor had submitted proper documents to obtain the loan of Rs.59 lakhs, but managed to obtain the loan by adopting other means. The petitioners herein, being bank officials, caused wrongful loss to the bank by sanctioning an ineligible loan on the basis of the fake documents, thereby committed offence under Sections 409, 109 & 120(B) IPC.

5.But, according to the learned counsel for the petitioners, the allegations made in the complaint did not make out the offence under the said sections. In support of his contention, the learned counsel for the petitioners has also invited the attention of this court to various earlier proceedings initiated by the defacto-complainant.

6.In fact, a perusal of the materials available on record would show that the loan was sanctioned to the 1st accused by the Zonal Office at Coimbatore, State Bank of India, on 20.08.2003. On 09.09.2003, title deeds pertaining to the property of the 2nd respondent viz., PRM Complex, No.133/199, Pollachi, Coimbatore were deposited with the Bank and on 10.09.2003, he confirmed the title deeds. Thus, the 2nd respondent created an equitable mortgage by deposit of his title deeds. Since subsequently there was default in repayment of the loan amount by the 1st accused, the Pollachi Branch of SBI issued notice under Section 13(2) of the SARFACESI Act. On 06.06.2006, the 2nd respondent has admitted his liability as guarantor vide his letter dated 06.06.2006. The relevant portion in the said letter sent by the 2nd respondent is as follows:-

> "As a law abiding citizen I never refute/denied my liability as a guarantor. In all my communications, I have expressed my genuine grievance and sought redressal from the Bank. But all are in vain. Kindly refer my letter dated 20.12.2005 addressed to Chief Manager and my letter dated 21.12.2005 addressed to General Manager's secretariat, (D & P B) Local Head Office, Chennai wherein I have expressed my desire to take over the (THRILL PARK) Project, but the bank has not made any reply to me in this regard."

On 19.06.2006, a sale notice was served. On 08.11.2006 & 09.11.2006, Tender-cum-Public auction notices were published in Newspapers viz., The Hindu & Dhinamalar respectively. At that juncture, the 2nd respondent filed a suit in O.S.No.65 of 2006 before the Sub-Court, Pollachi, as against the State of Bank India; but, the said suit was dismissed on 13.03.2008. Aggrieved over the dismissal of the suit, the 2nd respondent filed an appeal in A.S.No.55 of 2008 before the District Court at Coimbatore; but, the said appeal was also dismissed on 21.09.2011. In the meanwhile, the 2nd respondent has also filed a private complaint in C.M.P.No.5712/2010 before the learned Judicial Magistrate -I, Pollachi as against the accused 1 & 2 herein, the petitioners herein and one K.Murali. The said complaint was dismissed on 21.10.2010 by the learned Judicial Magistrate No.I, Pollachi. While dismissing the complaint, the learned Magistrate has observed as follows:-

> "The complainant questions the procedures

adopted by the Bank officials which this Court feels that the same is not proper. If the Bank officials erred in their duties, the same can be taken action only by the higher up officials of the Bank.

The complainant after exhausting all the remedies, belatedly filed this case purposely to rope up all the proposed accused in this case.

A careful perusal of the complaint, Sworn statement and the documents filed will go to show no prima facie to proceed as against the proposed accused.

In the result, the complaint is dismissed u/s 203 of Criminal Procedure Courts."

Thereafter, the 2nd respondent/defacto-complainant lodged the present complaint as against the accused 1 to 3 and three auction purchasers and also as against the unnamed bank officials.

7.The auction purchasers filed petitions in Crl.O.P.Nos.1083, 1084 & 1076 of 2012 before this Court seeking to quash the criminal proceedings as against them. By order dated 05.03.2012, this Court allowed the said criminal original petitions quashing the criminal proceedings as against the auction purchasers. While allowing the petitions, this Court has observed as follows:-

"94.As rightly argued by the learned senior counsel Mr.B.Sriramulu, Mr.N.R.Elango and Mr.AR.L.Sundaresan, the criminal proceedings as against the petitioners in the present case in Crime No.879 of 2011 are manifestly attended with mala fide and has instituted maliciously with an ulterior motive for wreaking vengeance on the petitioners and with a view on the petitioners for having purchased the property of the complainant (second respondent) in the auction conducted by the secured creditors viz., State Bank of India and also discloses the complainant's private and personal grudge as against the petitioners. Since the allegations in the complaint did not constitute a cognizable offence justifying the registration of the case and investigation thereon, the interference of this Court is warranted to exercise the inherent jurisdiction of this Court under Section 482 Cr.P.C., to prevent the abuse of Court and to secure the ends of justice.

> 95.Keeping in view of the above facts and on having regard to the relevant facts and circumstances of the case this court is inclined to quash the criminal proceedings pertaining to the case in Crime No.879 of 2011 in respect of the petitioners, who are arrayed as A3, A4 and A5 in the above case.
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> 96.In the result the petitions in Crl.O.P.Nos.1083, 1084 and 1076 of 2012 are allowed and the criminal proceedings against the petitioners/A3, A4 and A5 in the case in Crime No.879 of 2011 pending investigation on the file of the first respondent Police are quashed. Consequently, connected Miscellaneous Petitions are closed."

Thereafter, on completion of investigation, the 1st respondent-Police has filed the charge-sheet as against the petitioners herein also, who are the bank officials.

8.According to the learned counsel for the petitioners, after a period of eight years, after exhausting all the remedies, only to wreak vengeance as against the petitioners herein, the present complaint has been filed by the 2nd respondent only to harass the petitioners/bank officials.

9.But, it is the reply of the learned counsel for the 2nd respondent/defacto-complainant that the allegations made in the complaint would make out a case as against the petitioners herein also. In this regard, the learned counsel for the 2nd respondent has also submitted that though in the loan application the 1st accused had stated that his monthly income is Rs.47,000/-, in the 161 statement of one Muralithan, he had clearly stated that he had not verified the income of the 1st accused/borrower. In this regard, the learned counsel for the 2nd respondent has also invited the attention of this Court to the 161 statement of one Tmt.Ramani Krishnan, Income Tax Officer, who had stated in her statement that the 1st accused has shown his annual income as only Rs.28,703/-, for the year 2002-2003. Further, by inviting the attention of this Court to the 161 statement of Tmt.Valliammal, mother of the 1st petitioner, the learned counsel for the 2nd respondent submitted that in her statement, the said Valliammal had stated that the 1st accused had already sold his property to one Karuppasamy, which was given in mortgage before the SBI for availing loan. Thus, by relying upon that portion of the 161 statement of the said Valliammal, the learned counsel for the 2nd respondent submitted that without properly verifying the documents, only in order to help the 1st accused, as his brother 2nd accused is working in State of Bank of India, Vellor Branch, the petitioners herein sanctioned the loan amount to the 1st accused, by making the 2nd respondent to offer his property as security.

10.Thus, the sum and substance of the submissions made by the learned counsel for the 2nd respondent is that the act of the petitioners herein/bank officials cannot be said to be mere negligence and it is more than that of criminal intention to cheat the defacto-complainant. Thus, the learned counsel for the 2nd respondent submitted that absolutely no ground has been made out to quash the criminal proceedings and the entire allegations have to be decided only after conducting the trial. Thus, he sought for dismissal of the petition.

11.The learned Additional Public Prosecutor has also made a detailed submission, by filing a counter, opposing the prayer of the petitioners.

12.But, in my opinion, considering the factual aspects of the case, the question that has to be decided in this case is as to whether the allegations made in the complaint, if they are taken at their face value, would constitute the alleged offences as against the petitioners herein.

13.On a perusal of the entire materials available on record, I find that the allegation made against the petitioners herein is that without properly scrutinising the title deeds offered by the 1st accused and without properly verifying the payments said to have been made by the 1st accused to secure the equipments, the loan amount was sanctioned to the 1st accused by the petitioners herein. Since the 1st accused represented that even if there is any default in repayment of the loan amount, the Bank would seize only the property of the principal borrower/A1 and not the additional security offered by the 2nd respondent. Believing the words of the 1st accused, the 2nd respondent/defacto-complainant has stood as guarantor for the loan obtained by the 1st accused. Whereas on the date of applying for the loan, the property mortgaged by the 1st accused was not in his name. But, this was not properly verified by the petitioners herein/bank officials. Therefore, a reading of the allegations made in the complaint would show that the main allegation is only as against the 1st accused. Further, from a perusal of the allegations made in the complaint, I find that at the maximum, it could be considered as negligence on the part of the petitioners/bank officials in discharging their official duty of sanctioning the loan. Therefore, I could not see nothing more than the negligence on the part of the petitioners herein in discharging their duty, even if the entire allegation made in the complaint is taken as true. In fact, earlier private compliant preferred by the 2nd respondent/defacto-complainant in C.M.P.No.5712/2010 was dismissed by the learned Judicial Magistrate-I, Pollachi, on 21.10.2010 observing that the complainant questions the procedures adopted by the Bank officials and the same is not proper; that if the Bank officials erred in their duties, action can be taken only by the higher up officials of the Bank.

14.Even in the quash petitions filed by the auction purchasers in Crl.O.P.Nos.1083, 1084 & 1076 of 2012, while allowing the petitions by order dated 05.03.2012, this Court has observed that the criminal proceedings as against the auction purchasers are manifestly attended with mala fide, with an ulterior motive for wreaking vengeance and that since the allegations in the complaint did not constitute a cognizable offence justifying the registration of the case and investigation thereon, the interference of this Court is warranted to exercise the inherent jurisdiction of this Court under Section 482 Cr.P.C., to prevent the abuse of Court and to secure the ends of justice.

15.Similarly, in respect of the petitioners herein/bank officials, even if the allegations in the complaint as against the petitioners herein are assumed to be true, the same cannot make out a cognizable offence as against the petitioners.

16.Further more, by exhausting all the remedies, after a lapse of eight years, the present complaint was filed by the 2nd respondent. In this regard, it would be appropriate to refer the judgment reported in 2015(1) SCC 714 [Rajib Ranjan and others Vs. R.Vijaykumar] wherein it has been held as follows:-

> "19.If one looks into the allegations made in the complaint as stand alone allegations, probably what the High Court has said may seem to be justified. However, a little deeper scrutiny into the circumstances under which the complaint came to be filed would demonstrate that allegation of fabricating the false record is clearly an afterthought and it becomes more than apparent that the respondent has chosen to level such a make belief allegation with sole motive to give a shape of criminality to the entire dispute, which was otherwise civil in nature. As noted above, the respondent had in fact initiated civil action in the form of suit for injunction against the award of the contract in which he failed. Order of civil court was challenged by filing writ petition in the High Court. Plea of the respondent was that the action of the Department in rejecting his tender and awarding the contract to accused No.1 was illegal and motivated. Writ petition was

also dismissed with cost. These orders attained finality. It is only thereafter criminal complaint is filed with the allegation that accused No.1 is favoured by creating a false certificate dated 28.12.2004. We would dilate this discussion with some elaboration, hereinafter.

In G. Sagar Suri v. State of U.P., (2000) 2 SCC 636 [Rajib Ranjan & Ors vs R.Vijaykumar], it has been observed as follows:-

> "8..... It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.

In Inder Mohan Goswami and another v. State of Uttaranchal and others, (2007) 12 SCC 1, it has been held as follows:-

> "46. The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482 CrPC though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained.

17.Keeping the dictum laid down in the said judgments, I have carefully gone through the allegations made in the complaint, I find that even in this case, the 2nd respondent has chosen to level such a make belief allegations with sole motive to give a shape of criminality to the entire dispute, which was otherwise negligence on the part of the petitioners. Even if the entire allegation as observed earlier is taken to be true, it could be construed only as negligence on the part of the petitioners in discharging their official duty of sanctioning the loan amount and it does not make out a case for the alleged offences. Therefore, the impugned criminal proceedings are liable to be quashed in respect of the petitioners herein.

For the foregoing reasons, the criminal original petition is allowed and the impugned criminal proceedings are quashed in respect of the petitioners herein. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssv

To

1. The Judicial Magistrate No.1,
   Pollachi.

2. Do Through The Chief Judicial Magistrate,
   Coimbatore District.

3. The Inspector of Police,
   East Police Station,
   Pollachi, Coimbatore District.

4. The Public Prosecutor,
   High Court, Madras.

+1cc to Mr.A.Thiyagarajan, Advocate, S.R.No.8952
+1cc to Mr.V.Vijaykumar, Advocate, S.R.No.9050

Crl.O.P.No.32036 of 2013
and
M.P.Nos.1 & 2 of 2013

PPA(CO)
CA(03/03/2016)