

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 11th DAY OF FEBRUARY 2016

THE HON'BLE MR. JUSTICE K.K.SASIDHARAN

A.No.4158 of 2013

in

C.S. No.645 of 2012

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1 Smt.Vidya,
D/o.Late N.Krishnaswamy
Old No.19/4 New No.11, Thangavel Street,
Gokulam Apartments,
T.Nagar, Chennai-17

..Plaintiff

Vs

1 Velu
S/o.Ekanathan
No.103, Gangai Amman Koil Street,
Vadapalani, Chennai-26

2. H.Sankaranayanan,
The Insepctor of Police,
S 15 Selaiyur Police Station, Selaiyur,
Chennai

Presenty working as
The Inspector Police,
Madipakkam, Chennai

....Defendants

A.No.4158 of 2013

1.H.Sankaranayanan,
The Insepctor of Police,
S 15 Selaiyur Police Station, Selaiyur,
Chennai

Presenty working as
The Inspector Police,
Organised Crime Intelligence Unit,
Mylapore, Chennai 600004

..Applicant/2nd Defendant

Smt.Vidya,
D/o.Late N.Krishnaswamy
Old No.19/4 New No.11, Thangavel Street,
Gokulam Apartments,
T.Nagar, Chennai-17

..Respondent/Plaintiff

Application praying that this Hon'ble Court be pleased to pass an order to reject the plaint filed in C.S.No.645 of 2012.

This application coming on this day before this court for hearing Court Made the following order:

These applications coming on this day before this court for hearing court made the following order:

This is an application at the instance of the 2nd defendant in C.S.No.645 of 2012 and the prayer is to reject the plaint on the ground of failure to make out a cause of action.

2. The respondent filed a suit in C.S.No.645 of 2012 against the applicant and another, claiming a sum of Rs.One Crore as damages alleging malicious prosecution.

3. According to the respondent, the applicant in collusion with the first defendant registered a case against her under various provisions of the Indian Penal Code on allegation that the loan taken by her was not repaid and thereby, she cheated the first defendant. The learned Judicial Magistrate, Tambaram, by order dated

12.07.2011 discharged the applicant with an observation that there are no sufficient grounds to frame charges against her.

4. The applicant has come up with this application contending that in case suits of this nature are entertained against investigating officers for performing their duties, it would not be possible for the Station House Officers to investigate cases. There are no other grounds taken in the affidavit filed in support of the interlocutory application to axe the plaint at the threshold.

5. The learned counsel for the applicant contended that the respondent failed to plead that the applicant initiated a false case against her and that the criminal case was nothing but malicious prosecution. The learned counsel contended that the plaint averments are not sufficient to decree the suit and as such, the plaint should be rejected by invoking Order 7 Rule 11 of CPC.

6. The learned counsel for the respondent submitted that necessary averments were made in the plaint and evidence to prove those averments would be produced by the respondent during trial and as such, the plaint is not liable to be rejected at this point of time.

7. The respondent filed the suit alleging that the applicant herein along with the first defendant in

C.S.No.645 of 2012 foisted a false complaint against her converting a civil suit into one of criminal. She was made to undergo the agony of criminal proceedings. The final report filed by the applicant in Crime No.37 of 2010 was taken on file by the Judicial Magistrate, Tambaram in C.C.No.203 of 2010. The learned Judicial Magistrate passed an order discharging the respondent holding that there are no sufficient grounds to frame charges against her. The order has become final.

8. The respondent contended that the money transaction was covered by an agreement. It was not possible for the first defendant in the suit to recover the money by resorting to civil proceedings and as such, he in collusion with the applicant converted the civil proceedings into a criminal proceedings and initiated malicious prosecution against her.

9. The applicant wanted the plaint to be rejected at the threshold. The affidavit filed in support of the interlocutory application does not contain any material, much less justifiable material to axe the plaint by invoking Order 7 Rule 11 of CPC.

10. While considering the application under Order

7 Rule 11 of CPC, the Court is concerned only with the plaint averments. In case, the plaint contains necessary materials to sustain the plea, the plaintiff should be permitted to prosecute the suit. It is for the plaintiff to produce acceptable materials before the Court to justify his claim. A mere statement that in case a suit of this nature is entertained, investigating authority will not be in a position to investigate the case cannot be a reason to reject the plaint.

11. The Supreme Court in **P.V.Guru Raj Reddy Represented by GPA Laxmi Narayan Reddy v. P.Neeradha Reddy [(2015) 8 SCC 331]** indicated the conditions precedent for the exercise of power under Order 7 Rule 11 of CPC. The Supreme Court observed:-

"5. Rejection of the plaint under Order 7 Rule 11 of CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order 7 Rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that have to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order 7 Rule 11, the stand of the defendants in the

written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial."

12. The conditions prescribed under Order 7 Rule 11 of CPC are not satisfied in this case. The applicant failed to plead that the suit is bound to fail and that there is no cause of action to drag him to litigation. I am therefore of the view that there is absolutely no merit in the contention taken by the applicant.

In the upshot, I dismiss the application.

sd/.K.K.S.J

11.02.2016

//Certified to be a true copy//
Dated this the day of 2016.

S.s/09.08.2016

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.