

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRL.O.P.No.24231 of 2011 and
MP.Nos.1 & 2 of 2011

B.Devi

.. Petitioner

Vs.

1. State

Rep. by the Inspector of Police,
Central Crime Branch,
Egmore,
Madras - 600 008.

2. Easwaran,

Senior Branch Manager,
Bank of India,
Housing and Personal Finance Branch,
Garuda Building,
No.46, Cathedral Road,
Madras - 600 086.
(Cr.No.655 of 2007)

... Respondents

Prayer :- Criminal Original Petition has been filed under Section 482 of the Cr.P.C to call for the records pertaining to C.C.No.7876 of 2010 pending on the file of the XI Metropolitan Magistrate, Madras and quash the same as illegal, incompetent and without jurisdiction by allowing the present criminal original petition.

For the Petitioner : Mr.J.Ramesh

For the Respondent - 1 : Mr.P.Govindarajan

Additional Public Prosecutor

For the Respondent - 2 : Mr.B.Sivakumar

ORDER

This criminal original petition is preferred by the petitioner /Accused No.2 against the proceedings pending in C.C.No.7876 of 2010 on the file of the XI Metropolitan Magistrate, Madras and quash the same.

2. Brief case of the petitioner/accused No.2:

The prosecution case is that one Balaji and the petitioner/accused No.2 Devi had approached the defacto complainant in the year 2003 for a home loan and obtained loan amount of Rs.10 Lakh and it had not been repaid. For realizing the loan amount the defacto complainant when intended to sell the mortgaged property, they came to know that the document mortgaged is a forged one. Then the defacto complainant approached the XI Metropolitan Magistrate in the year 2007 in M.P.No.2926 of 2007 and thereafter, the complaint had been forwarded with a direction under section 156(3) of the Criminal Procedure Code, 1973. The respondent police had registered a case in Cr.No.655 of 2007 for the alleged offence under section 465, 468, 471, 420 r/w 34 of IPC 1860. The respondent police after investigation had final report and the case was taken on file in C.C.No.7876 of 2010. Aggrieved over the same, this quash petition is filed.

3. Heard the arguments on either side and perused the entire materials available on record.

4. Admittedly it is the case of the defacto complainant that the defacto complainant has paid a sum of Rs.10,00,000/- to this petitioner/accused based on the mortgage deed executed by the petitioner/accused in the year 2003.

5. When the petitioner/accused has failed to repay the loan amount, the defacto complainant attempting to sold the mortgage property given by the petitioner/accused. But at that relevant point of time only this petitioner came to know that the very property executed by the petitioner/accused is a forged one.

6. Based on that the defacto complainant had approached the learned XI Metropolitan Magistrate in the year 2007 and filed a private complaint in M.P.No.2926 of 2007 and considering the case of the defacto complainant, the learned Magistrate has directed the Police under Section 126(Clause 3) of the Cr.P.C., 1973, accordingly, the respondent/Police has registered the case in Cr.No.655 of 2007 for the alleged offence under Sections 465, 468, 471, 420 r/w 34 of I.P.C. and filing report and also taken on file in C.C.No.7876 of 2010.

7. When the mortgage deed itself is forged one, it is clearly attack to the penal provision of cheating, therefore, the very filing of the F.I.R. and charge sheet for the offence under Sections 465, 468, 471, 420 r/w 34 of I.P.C., which was taken on file in C.C.No.7876 of 2010 which clearly shows that the charges are dealt by the learned Magistrate and the petitioner/accused ought to have cured is innocent to the learned Magistrate during the course of trial.

8. When the offences are made out or not? It is the duty of the petitioner/accused, who proved his innocent before the trial

Court. Therefore, I am not inclined to entertain the Criminal Original Petition filed by the petitioner/accused and the same is liable to be dismissed.

9. In the result:

(a) this Criminal Original Petition is dismissed;

(b) the petitioner/accused has permitted to raise all the grounds before the learned Magistrate in C.C.No.7876 of 2010 and put forth his case;

(c) the learned XI Metropolitan Magistrate, Madras is directed to dispose the C.C.No.7876 of 2010 within a period of six months from the date of receipt of a copy of this order without influencing any averments made in this order and pass appropriate orders on merits independently. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

To

1. The XI Metropolitan Magistrate, Madras.
 2. Do Thro The Chief Metropolitan Magistrate, Madras.
 3. The Inspector of Police
Central Crime Branch
Egmore, Chennai 8.
 4. The Public Prosecutor
High Court, Madras 104.
- +1 CC to Mr.J.Ramesh, Advocate sr 43319.
+1 CC to Mr.B.Sivakumar, Advocate r 43217.

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SP(19/03/2019)