

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.06.2017

CORAM
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Cr1.O.P No.24926 of 2011
and
M.P.Nos.1 and 2 of 2011

G.Ramanathan

... 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.655/2007)

... Respondents

Prayer: Criminal Original Petitions filed under Section 482 of 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 Petitioner : Mr.R.Jayakumar

For Respondents : Mr.P.Govindarajan
Additional Public Prosecutor

JUDGMENT

This criminal original petition is preferred by the petitioner /Accused No.4 against the proceedings pending in C.C.No.7876 of 2010 on the file of the learned XI Metropolitan Magistrate, Madras and quash the same.

2.Brief case of the petitioner/accused No.4

The prosecution case is that one Balaji and her wife 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 X.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 filed the final report and the learned Magistrate to cognizance of the offence in C.C.No.7876 of 2010. Aggrieved over the same, this quash petition is filed.

3.The learned counsel for the petitioner/accused No.4 submits that the act of the respondent police filing charge sheet in a transaction where no offence is made out is illegal incompetent and liable to be quashed.

4.The learned counsel for the petitioner/accused No.4 submits that the respondent police failed to note that the transaction involved is purely a civil transaction and the respondents have given criminal colour to the same.

5.The learned counsel for the petitioner/accused No.4 submits that the respondent police failed to note that the non performance of contract would not amount to cheating or any other offence under the code and it give rise only a civil liability and not a criminal liability.

6.The learned counsel for the petitioner/accused No.4 submits that the respondent police failed to note that the guarantor's liability is co-extensive only under contract law and not under the penal code.

7.The learned counsel for the petitioner/accused No.4 submits that the respondent police in filing charge sheet for non performance or contract under section 420 of IPC shows the non application of mind and it is liable to be quashed.

8.The learned Additional Public Prosecutor appearing for the respondent opposed the contentions of the petitioner/accused and sought for dismissal of the criminal original petition.

9.I heard Mr.R.Jayaprakash, learned counsel for the petitioner and Mr.P.Govindarajan, learned Additional Public Prosecutor for the respondent and perused the entire materials available on record.

10.Admittedly, a mortgage deed was executed and the same is created only to gain the money, when the mortgaged deed was booked into about the validness of the document, it came to understand it is absolutely forged one. Thus being the petition, the very direction issued by the learned Magistrate to the Police for registering the case is well considered one and the First Information Report and the Final report filed by the respondent Police absolutely valid in the eye of law.

11.If the petitioner/accused wants to prove his innocence, he might have face the trial in the above criminal proceedings and prove his innocence. There is no valid ground raised by the petitioner to quash the F.I.R. Hence, all the points raised by the petitioner/accused should ought to have raise and prove before the trial Court. Hence, this Criminal Original Petition is liable to be dismissed.

12.In the result:

(a) this criminal original petition is dismissed;

(b) the trial court is directed to dispose the case pending in C.C.No.7876 of 2010 on the file of the learned XI Metropolitan Magistrate Madras, within a period of six months from the date of receipt of a copy of this order;

(c) the petitioner/accused is permitted to raise all the grounds raised in this petition before the trial Court and the trial Court is directed without influencing any averments made in this order had dispose the case on merits. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS.VIII)

//True Copy//

Sub Assistant Registrar

vs

To

1.The XI Metropolitan Magistrate,
Madras.

2.Do-Thro' Chief Metropolitan Magistrate,
Madras.

3.The Inspector of Police,
Central Crime Branch, सत्यमेव जयते
Egmore, Madras - 600 008.

4.The Public Prosecutor,
High Court,
Madras - 104.

+1cc to Mr.R.Jayaprakash, Advocate, S.R.No.43516

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and
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rrs 18/03/2019