

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.04.2017
CORAM
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
Crl.O.P Nos.13015 and 13016 of 2010

1.R.Krishnamoorthy
2.K.R.Palanisamy
3.P.Soundharam
4.V.K.Saravanan

... Petitioners in both Crl.O.Ps/
Accused 4 and 1 to 3

vs.

- 1.State represented by
Inspector of Police,
Central Crime Branch,
Tirupur, Coimbatore District.
(Cr.No.12 of 2009)
- 2.The Chief Manager,
UCO Bank,
Tirupur Branch,
Kumaran Road, Tirupur.
- 3.Asset Reconstruction
Company (India) Ltd. (ARCIL),
Shreepati Arcade, August Kranti Marg,
Nana Chowk, Mumbai - 400 036... Respondents in both Crl.O.Ps
(Impleaded the 3rd respondent as per
order dated 25.10.2013 in MP.No.1 of 2013)

Common Prayer: Criminal Original Petitions filed under Section 482 of Cr.P.C., to call for the records in C.C.Nos.105 and 106 of 2010 respectively, pending on the file of the Judicial Magistrate No.1, Tirupur and quash the Charge Sheet.

For Petitioners : Mr.T.Mohan
for Mr.K.Surendar
(In both the Crl.O.P.s)

For Respondents : Mr.B.Ramesh Babu (for R1)
Government Advocate (Crl. Side)
(In both the Crl.O.P.s)

Mrs.Hema Sampath, Senior counsel
for M/s.S.Raveekumar (for R2)
(In both the Crl.O.P.s)

COMMON JUDGMENT

The above criminal original petitions have been preferred under Section 482, Cr.P.C., seeking to quash the proceedings in C.C.Nos.105 and 106 of 2010, on the file of the Judicial Magistrate-I, Tiruppur, wherein the petitioners are facing prosecution under Sections 120-B and 420 I.P.C., based on two separate charge sheets laid by the 1st respondent police.

2.The criminal law has been set in motion by UCO Bank, the 2nd respondent herein, stating that certain immovable properties belonging to the 2nd and 3rd petitioners, have been sold in parts by their power of attorney agent, the 4th petitioner herein in favour of various third parties, in spite of the fact that the said properties were mortgaged in favour of the Bank. The 1st petitioner, who has availed loan from the Bank as against the said properties has also been arrayed as an accused with the aid of Section 120-B IPC. The above complaint of the 2nd respondent Bank was registered by the 1st respondent police in Crime No.12 of 2009. However, after completion of investigation, strangely, two separate charge sheets have been laid as against the petitioners herein with verbatim identical allegations, except the details of the sale deeds and the names of the respective purchasers, in whose favour the properties that were mortgaged to the 2nd respondent Bank were sold. Since, the facts in both the cases are identical, a common order would suffice.

3.I heard Mr.T.Mohan for Mr.K.Surendar, learned counsel appearing for the petitioners, Mr.B.Ramesh Babu, learned Government Advocate (Criminal Side) appearing for the 1st respondent in both the CrI.O.P.s and Mr.Srinath Sridevan, learned counsel appearing for the 2nd respondent in CrI.O.P.No.13015 of 2010 and Mr.A.Sasidharan, learned counsel appearing for the 2nd respondent in CrI.O.P.No.13016 of 2010.

4.The only issue that has to be decided in the above original petitions is whether the case of the prosecution, if assumed to be true in its entirety, would render the petitioners criminally liable. The brief set of facts that are absolutely essential to determine the above issue can be summarized as follows:

(i)The 1st petitioner (4th accused), being one of the partners of "Chitrahara Traders" had along with the other partners, Ganeshwar had obtained certain credit facilities from UCO Bank (2nd respondent/defacto complainant) and Karur Vysya Bank at Tiruppur. The 2nd and 3rd petitioners had signed as

guarantors to the said credit facilities and had mortgaged their immovable properties measuring 10.78 acres with the banks under a paripasu agreement dated 23.03.2005. The 4th petitioner is non other than the power of attorney agent of the 2nd and 3rd petitioners.

(ii) During subsistence of mortgage of the said 10.78 acres of land, an extent of 7 acres of land out of it was sought to be redeemed and accordingly separate representations have been made to Karur Vysya Bank as well as the 2nd respondent Bank. Pursuant thereto and in view of considerable repayment of loan outstanding, the Karur Vysya Bank had issued a letter dated 15.03.2006 agreeing to release the extent of 7 acres out of the entire extent of 10.78 acres of land.

(iii) Similarly, the 2nd respondent Bank had also come forward to release the said 7 acres of land out of the 10.78 acres if a sum of Rs.3.69 Crores is paid to it. Accordingly, on 29.03.2006 a sum of Rs.65 lakhs has been paid to the 2nd respondent Bank by way of cash and four cheques dated 30.03.2006 have been issued for the remaining sum of Rs.3.04 Crores. As a result, the 2nd respondent Bank had issued a letter dated 30.03.2006 agreeing to release the extent of 7 acres out of the entire extent of 10.78 acres of land.

(iv) It is to be noted that the letter dated 30.03.2006 was subject to realization of the four cheques dated 30.03.2006 on or before 31.03.2006. It is evident from the perusal of the records that two of the four cheques were duly honoured and the remaining two cheques bearing a total sum of Rs.1.69 Crores were returned. However, the returned cheques have been replaced with two demand drafts for the said sum of Rs.1.69 Crores on 31.03.2006 itself. Although the statement of account gives credit to the said two demand drafts only on 10.04.2006, it has not been disputed that the demand drafts were handed over to the 2nd respondent Bank on 31.03.2006. Thus, the conditions stipulated vide letter dated 30.03.2006 were complied with.

(v) Thereafter, during the period between 03.05.2006 and 17.09.2007, certain portions of the above said extent of 7 acres of land have been sold by the 2nd and 3rd petitioners, through their power of attorney agent, the 4th petitioner in favour of various third parties by way of nine different sale deeds, without disclosing the mortgage that was created in favour of the Banks.

5.The learned counsel appearing for the petitioners contended that the sale deeds in question have been executed only subsequent to the release of the properties by both the Banks and that there was no subsisting mortgage on the dates of sale deeds. The learned counsel further submitted that the sale deeds were executed after complying with all the conditions imposed by the banks for release of the concerned lands, by making substantial repayments and after receiving written approvals from the banks for release of the lands and that the prosecution is an abuse of process of law.

6.On the other hand, the learned counsel appearing for the 2nd respondent/defacto complainant had contended that there were dues payable to the 2nd respondent bank at the time of execution of sale deeds and that though the extent of 7 acres was released by the 2nd respondent, the petitioners should not have executed any sale deed until the entire loan outstanding payable to the Bank was settled.

7.The learned counsel appearing for the 2nd respondent has neither disputed the letter dated 30.03.2006 issued by the 2nd respondent bank nor the timely compliance of the conditions imposed under the said letter. Though, the said letter dated 30.03.2006 does not form part of the charge sheet, this Court cannot turn a blind eye to such uncontroverted document, especially when the same has not been disputed by the respondents. It is also not the case of the prosecution that the petitioners had sold any property beyond the said extent of 7 acres. Therefore, the facts placed before this Court are admitted by all concerned and the sole point for consideration is whether such facts make out an offence under Sections 420 and 120-B IPC.

8.It is well settled position of law that "dishonest intention" is sine qua non to constitute an offence under Section 420 IPC, which has been reiterated by the Hon'ble Supreme Court in the following judgments:

- (a) Md. Ibrahim and others v. State of Bihar and another, reported in 2009 (8) SCC 751;
- (b) Hridaya Ranjan Prasad Verma and others v. State of Bihar and another, reported in 2000 (4) SCC 168;
- (c) G.Sagar Suri v. State of U.P., reported in 2000 (2) SCC 736;
- (d) Alpica Finance Ltd. v. P.Sadasivan and another, reported in (2001) 3 SCC 513;
- (e) Thermax Ltd. And others v. K.M.Johny and others, reported in 2011 (13) SCC 412;

9.It is pertinent to note that the term "dishonestly" has been defined under Section 24 of the Indian Penal Code, as

follows:

"Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing dishonestly".

10. In the case on hand, admittedly, substantial payments have been made to the 2nd respondent bank in due compliance of its demand for releasing the 7 acres of land. The sale deeds in question have also been executed only after releasing the respective properties from the mortgage created in favour of the 2nd respondent bank. Thus, it cannot be said that the petitioner had any intention of causing wrongful loss or wrongful gain to anyone and consequently no dishonesty can be adduced to the petitioners to invoke Section 420 IPC as against them. Further, when admittedly the mortgage pertaining to the properties mentioned in the sale deeds have already been redeemed, it is an absurdity to state that the sale deeds were executed by concealing the mortgage.

11. As far as the charge of conspiracy under Section 120-B IPC is concerned, the facts do not disclose any agreement to commit an illegal act or any act by illegal means, as stipulated under Section 120-A IPC. It is further clear from the proviso clause to Section 120-A IPC that criminal conspiracy comes into play when commission of any other offence is involved. While the facts do not constitute commission of any offence, the theory of conspiracy does not have place to stand and as such the charge under Section 120-B IPC is also unsustainable.

12. The contention put forth on behalf of the 2nd respondent that even though the properties were released by the bank, the petitioners should have sold them only after settling the entire loan outstanding is bereft of any logic or reasoning. If the said contention is to be accepted then the letter dated 30.03.2006 issued by the 2nd respondent for release of 7 acres of land would be rendered meaningless.

13. It is astonishing that while the release of the properties by the Karur Vysya Bank is stated in the charge sheets, the release made by the 2nd respondent Bank has been conveniently suppressed and such omission casts serious doubts on the motive behind initiation of the prosecution. I am therefore constrained to come to a conclusion that the impugned prosecution is driven by malafides and as such is a sheer of abuse of process of law.

14.In the result:

(a) both the Criminal Original Petition Nos.13015 and 13016 of 2010 are allowed;

(b) the charge sheet in C.C.Nos.105 and 106 of 2010 respectively, pending on the file of the Judicial Magistrate No.1, Tirupur, is quashed. Consequently, connected miscellaneous petitions stand closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Judicial Magistrate No.1,
Tirupur.

2.The Inspector of Police,
CCB, Tiruppur.

3.The Public Prosecutor
High Court Madras

+1 cc to Mr.A.Sasidharan Advocate sr 24276

+1 cc to Mr.K.Surendhar Advocate sr 24317

CrI.O.P Nos.13015 and 13016 of 2010

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