IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

CRL.O.P.No.15151 of 2011
and
M.P.Nos.1 and 2 of 2011

1.V.Avinashilingam
2.A.Rajarajeswaran
3.A.Maheswari .. Petitioners

Vs

1. State,
rep. by Inspector of Police
District Crime Branch,
Coimbatore.

2. Mettupalayam Shriram Transport
Finance Company Limited,
rep. by its Branch Manager,
No.152, S.V.M.Complex,
C.K.Enclave, 1st Floor,
Karamalai Road,
Mettupalayam,
Coimbatore. .. Respondents

PRAYER: Petition under Section 482 of the Code of Criminal Procedure to call for the records in C.C.No.562 of 2010 pending on the file of the Judicial Magistrate, Mettupalayam, Coimbatore District and quash the same as illegal, incompetent and ultra vires.

For Petitioners : Mr.MA.P.Thangavel

For Respondents : Mr.P.Govindarajan(for R1)
Addl. Public Prosecutor

Mrs.Jayasribaskar
for R2

ORDER

The petitioners have filed this petition to call for the records in C.C.No.562 of 2010 pending on the file of the Judicial Magistrate Court, Mettupalayam and quash the same.

2. The 2nd respondent/ Mettupalayam Shriram Transport Finance Company Limited, herein after referred to as "Company") was doing business by providing car loan and vehicle loan under the hypothecation Scheme. On 21.3.2008, the petitioners 1 and 3 have approached the 2nd respondent Company for vehicle loan for the vehicle bearing registration No.TN-41 Q 1951 Tata 909 for an amount of Rs.4,10,000/- and the 1st petitioner signed as debtor and his wife 3rd petitioner stood as guarantor and both of them have agreed to repay the amount by monthly instalments regularly.

3. The 1st petitioner approached 2nd respondent Company for vehicle loan with the help of accused No.1 (P.Sivakumar). After examination of the documents of the 1st petitioner and believing the words of the petitioners 1 and 3, the 2nd respondent Company sanctioned the vehicle loan. The transaction and the sanction was held with the knowledge and act of the first accused P.Sivakumar. The 1st petitioner received an amount of Rs.3,94,511/- out of the loan amount of Rs.4,10,000/- and the balance amount of Rs.15,489/- was deducted as first EMI in the account of the 1st petitioner.

4. The case of the prosecution is that accused Nos.1 to 4 have joined together and conspired to cheat the 2nd respondent Company by defaulting repayment of Rs.4,10,000/-. At the time of receiving the loan, petitioners 1 and 3 have entered in Hypothecation Agreement dated 27.3.2008 with the 2nd respondent Company agreeing to make name transfer and also make hypothecation endorsement in the 2nd respondent's company name with the help of 1st accused. Thus, accused Nos.1, 2 and 4 were joint responsibility and duty bound to make hypothecation endorsement in the 2nd respondent's Company name. Accordingly, the 2nd respondent Company entrusted the original RC book to them for the above said endorsement. However, accused Nos.1 to 4 in order to cheat the 2nd respondent Company have jointly conspired in the illegal manner and dishonest intention to cheat the 2nd respondent Company by defaulting repayment of loan and for the above said illegal goal, accused Nos.1 to 4 have transferred the registered ownership of the vehicle in the name of 2nd petitioner Rajeswaran (accused No.3) by suppressing the loan and in fact, they have breached the terms and conditions of the agreement for the purpose of causing wrongful loss to the 2nd respondent Company. Hence, the

accused 1 to 4 have to be punished under Section 120(b), 406 and 420 I.P.C.

5. According to the petitioners the relief sought for in the complaint is to take necessary action to recover the amount form the defaulting claims. The 2nd respondent ingeniously lodged a complaint seeking recovery of money through the criminal Court and the 2nd respondent is converting the civil dispute into criminal complaint. According to the petitioners, the only remedy available to them is to knock the doors of the Civil Court for recovery of money. Ironically, the 1st respondent having connivance with the 2nd respondent has converted a suit for recovery of money into an offence under Sections 406 and 420 I.P.C. Hence, the petitioners have filed the petition under Section 482 of Cr.P.C.

6. I heard Mr.MA.P.Thangavel, learned counsel for the petitioners, Mr.P.Govindarajan, learned Additional Public Prosecutor for the 1st respondent and Mrs.Jayasri Baskar, learned counsel for the 2nd respondent and also perused the materials available on record.

7. The learned counsel for the petitioners submitted that the act of the 2nd respondent Company in converting a pure civil dispute in criminal case shows that the 2nd respondent Company was trying to use the Criminal Court as a weapon in their hand to recover the loan amount. He would submit that the 1st respondent ought not to have entertain the complaint of 2nd respondent Company, rather 1st respondent should advice them to approach the Civil Court for appropriate remedy. The learned counsel further submitted that the whole proceedings pending before the Judicial Magistrate does not warrant a full fledged trial, which is a criminal waste of precious judicial time. When the complaint itself does not disclose an offence, it is needless to conduct a full fledged trial, which is unwarranted as to the facts and circumstances of the present case.

8. Per contra, the learned Additional Public Prosecutor for the 1st respondent submitted that pursuant to the complaint lodged by the 2nd respondent Company, they have registered the case and investigated the matter and also filed final report before the Judicial Magistrate Court. Since the matter needs full fledged trial, there is no need to quash the same.

9. The learned counsel for the 2nd respondent submitted that in order to cheat the complainant, the petitioners and accused No.1 have conspired jointly and transferred the

ownership of vehicle bearing registration No.TN41 Q 1941 in the name of the 3rd petitioner by completely suppressing the loan availed by the petitioners 1 and 2. Thus, the petitioners, who are accused Nos.2 to 4 and the 1st accused have committed an offence of criminal conspiracy and criminal breach of trust and cheating.

10. On a perusal of the typed set of papers, it is seen that for the purchase of car bearing registration No.TN-41 Q 1941, the petitioners 1 and 2 have approached the complainant/2nd respondent Company and availed loan of Rs.4,10,000/-, which was evident from the loan cum hypothecation agreement dated 27.3.2008 executed by the petitioners 1 and 2 in favour of them.

11. The petitioners have not disputed the fact of availing of loan of Rs.4,10,000/- from the 2nd respondent Company by the petitioners 1 and 3 and have admitted the default committed by them. The grievance of the petitioners is that instead of taking action to recover the amount from the defaulting claims, the 2nd respondent Company has lodged a complaint seeking recovery of money through the Criminal Court and the 1st respondent has also filed a charge sheet.

12. It is settled that if there is a flavour of civil nature, the same cannot be agitated in the form of criminal proceeding. However, on over all analysis of materials available on record, it is seen that the 2nd respondent Company has not initiated criminal proceedings to recover the defaulted amount as alleged by the petitioners.

13. According to the 2nd respondent Company, after taking delivery of the car in question, the original RC book and related papers have been handed over to Mettupalayam Branch Field Executive P.Sivakumar (1st accused) on 23.5.2008 to transfer the vehicle in the name of the 1st petitioner with hypothecation endorsement in favour of the 2nd respondent Company. However, with the help of 1st accused, the petitioners have transferred the registered ownership of the car in the name of the 3rd petitioner.

14. Generally, if a person buy a vehicle under finance and hypothecation agreement executed, the hypothecation has to be noted in the original RC book by way of endorsement. In this case, when the petitioners 1 and 3 borrowed car loan from the 2nd respondent Company and have taken the original RC book from them for transfer of the car in the name of the 1st petitioner with hypothecation endorsement, how the car was transferred in the name of 3rd petitioner is

not known. For that, there was no convincing reason forthcoming from the petitioners side. No materials have been produced by the petitioners to show that how the car bearing registration No.TN-41 Q 1941 was registered in the name of 3rd petitioner, who is none other than son of the petitioners 1 and 2. Thus, there was a suspicion over the transfer of vehicle in the name of the 3rd petitioner.

15. Though the petitioners contended that a civil dispute has been converted by the 2nd respondent Company into a criminal complaint, nothing prevented them from showing how the vehicle in question was transferred in the name of 3rd petitioner when there was hypothecation agreement qua vehicle bearing registration No.TN-41 Q 1941 in favour of the 2nd respondent Company.

16. Prima facie, it appears that one P.Sivakumar (1st accused), who was working as Sales Executive under the 2nd respondent at the relevant point of time and the petitioners joined together and transferred the ownership of the car bearing registration No.TN-41 Q 1941 in the name of the 3rd petitioner by completely suppressing the loan availed by the petitioners 1 and 2 from the 2nd respondent Company and also the hypothecation agreement executed by them in respect of the car in favour of the 2nd respondent Company, thereby breached the terms and conditions of the hypothecation agreement. If really, all these things were committed by the 1st accused, as alleged by the petitioners, what prevented the petitioners 1 and 2, who were borrowers of loan of a sum of Rs.4,10,000/- from the 2nd respondent Company, to inform the same immediately to the 2nd respondent Company, which would show their dishonest. Therefore, the matter needs full fledged trial. In the petition, the petitioners have not stated anything how the car in question was transferred in the name of the 3rd petitioner. Moreover, the petitioners have not pleaded discharge of the loan availed from the 2nd respondent Company.

17. It is to be noted that the 2nd respondent Company advanced loan to the petitioners 1 and 2 on 27.3.2008 and the original RC book and the related papers have been handed over to the 1st accused on 23.5.2008 to transfer the vehicle in the name of 1st petitioner with hypothecation endorsement in favour of the 2nd respondent Company. Thereafter, on finding that the vehicle in question bearing registration No.TN-41 Q 1941 was transferred in the name of 3rd petitioner, the 2nd respondent Company lodged a complaint on 30.6.2008 before the Superintendent of Police, Coimbatore (Rural) and the complaint was taken up on file by the District Crime Branch, Coimbatore and registered the

FIR in Crime No.12 of 2008 on 21.7.2008. After examination of witnesses, the Sub Inspector of Police, District Crime Branch, Coimbatore Rural District has filed the final report before the Judicial Magistrate, Mettupalayam and the same was taken on file as C.C.No.562 of 2010.

18. On overall analysis of the matter, this Court finds that the matter needs full fledged trial and at this stage, this Court don't want to interfere with the proceedings in C.C.No.562 of 2010 pending on the file of the Judicial Magistrate, Mettupalayam. Further, no prima facie case has been made out by the petitioners to quash the criminal proceedings in C.C.No.562 of 2010. The factual disputes and conduct of parties cannot be decided in this petition filed under Section 482 of Cr.P.C. Therefore, I am of the view that it is for the petitioners to prove their case by facing trial proceedings before the Judicial Magistrate Court. The quash petition is bereft of material particulars and the same is liable to be dismissed.

19. Accordingly, the Criminal Original Petition is dismissed. Consequently, M.P.No.1 of 2011 is closed. It is open to the petitioners to establish their case before the Judicial Magistrate for the alleged offence levelled against them. Since the calender case is of the year 2010, this Court directs the Judicial Magistrate, Mettupalayam to dispose of the same as expeditiously as possible in accordance with law. It is made clear that the Judicial Magistrate, Mettupalayam decide the case on merits and in accordance with law without influencing the order of this Court. Consequently, connected miscellaneous petitions are closed.

vs

Sd/-

Assistant Registrar(Ccc)

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate,
Mettupalayam.

2.The Inspector of Police,
District Crime Branch,
Coimbatore.

+1cc to Mr.K.V.Sridharan , Advocate SR.No. 68739

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ASK(02/11/2018)