

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2018

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. No.8664 of 2018 & Crl.M.P. Nos.4486, 9121 & 9768 of
2018

S. Mohankumar

Petitioner

vs.

- 1 State represented by the Inspector of Police
Central Crime Branch - Team 32
Chit Fund and Kanduvatti 32 Team
Chennai
(Cr. No.164 of 2017)

- 2 S. Balasubramanian

Respondents

Criminal Original Petition filed under Section 482
Cr.P.C. seeking to call for the records in FIR in Cr. No.164
of 2017 on the file of the first respondent and quash the
same.

For petitioner Mr. R. Vivekanandan
for Mr. A. Damodaran

For R1 Mr. C. Iyappa Raj
Additional Public Prosecutor

For R2 Mr. R. Srinivas
for Mr. M.R. Sivakumar

ORDER

This Criminal Original Petition has been filed seeking to
call for the records in FIR in Cr. No.164 of 2017 on the file
of the first respondent police and quash the same.

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2 For the sake of convenience, the parties are referred to by their name.

3 On the complaint lodged by one Balasubramaniam, the second respondent, the first respondent police registered a case in Cr.No.164 of 2017 on 02.06.2017 under Sections 406, 420 and 506(I) IPC and Sections 3 and 4 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, against Mohan Kumar, for quashing which, this Criminal Original Petition has been filed.

4 Heard Mr. Vivekanandan, learned counsel for Mohan Kumar, Mr. C. Iyappa Raj, learned Additional Public Prosecutor appearing for the first respondent State and Mr. Srinivas, learned counsel for Balasubramaniam.

5 Mr. Vivekanandhan, learned counsel for Mohan Kumar contended that Balasubramaniam had already given a complaint to the Deputy Commissioner of Police, Kilpauk on 13.09.2016, in which, there is no allegation relating to kandhuvaddy transaction. He further contended that Balasubramaniam and Mohan Kumar had entered into a Memorandum of Understanding on 15.06.2015 and since Balasubramaniam failed to act as per the Memorandum of Understanding, Mohankumar has filed a suit in C.S. No.735 of 2016 in the High Court and that he is ready and willing to withdraw the suit in order to purchase peace.

6 Per contra, the learned Additional Public Prosecutor submitted that there are three other cases pending against Mohan Kumar in Cr. Nos.446 of 2009, 179 of 2017 and 110 of 2018 on similar allegations by various complainants. He further submitted that Mohan Kumar is into kandhuvaddy business and he has been lending money on usurious rate of interest to victims and harassing them.

7 Refuting the aforesaid contentions, Mr. Vivekanandan contended that the present complaint by Balasubramaniam has been given by suppressing the earlier complaint dated 13.09.2016 which is an abuse of process of law and therefore, the FIR in Cr. No.164 of 2017 is liable to be quashed.

8 This Court gave its anxious consideration to the rival submissions.

9 On a reading of the FIR in Cr. No.164 of 2017, it is seen that Balasubramaniam has alleged that he had totally borrowed a sum of Rs.1.50 crores from Mohan Kumar at an interest rate of 12% per annum in the years 2008 and 2010 and that he had repaid the entire amount, despite which, Mohan Kumar is claiming interest at the rate of 33% per annum and has filed a money suit for recovery of Rs.45 lakhs.

P.N. PRAKASH, J.
cad

because Mohan Kumar has filed a suit for recovery of money, that cannot absolve him of criminal liability, if it is found during investigation that he had charged exorbitant interest. Since there are disputed questions of fact, the FIR cannot be quashed in the light of the law laid down by the Supreme Court in State of Haryana vs. Bhajan Lal [(1992) Supp. 1 SCC 335].

In the result, this Criminal Original Petition stands dismissed as being devoid of merits. Connected CrI.M.Ps. are closed.

Sd/-

Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

cad

To

1 The Inspector of Police
Central Crime Branch - Team 32
Chit Fund and Kanduvatti 32 Team
Chennai

2 The Public Prosecutor
Madras High Court
Chennai 600 104

+ 1 cc to Mr. A. Damodaran, Advcoate Sr.52548

+ 1 cc to Mr. M.R.Sivakumar, Advocate Sr.52498

CrI.O.P. No.8664 of 2018

(CS-DR)

EU(16/08/2018)

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