IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.07.2018
Pronounced on : 11.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.3375 of 2011
and
M.P.No.1 of 2011

1.P.Mugundan,
S/o.B.Parasuram.

2.M.Padmavathy,
W/o.P.Mugundan. ... Petitioners/Accused No.1 & 2

Vs.

Indian Overseas Bank,
Valmiki Nagar Branch,
Thiruvanmiyur,
Chennai - 600 041,
Rep. by its Senior Manager
and Authorised Officer,
Manorama Prabhakaran. ... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.8800 of 2004 on the file of the XI Metropolitan Magistrate, Saidapet, Chennai and quash the same.

For Petitioner : Mr.G.Mohanakrishnan

For Respondent : No appearance (Name printed)

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O R D E R

This Criminal Original Petition is filed to call for the records in C.C.No.8800 of 2004 on the file of the XI Metropolitan Magistrate, Saidapet, Chennai and quash the same.

2.The petitioners herein are accused A1 and A2 in C.C.No.8800 of 2004 pending trial on the file of XI Metropolitan Magistrate Saidapet, Chennai for the offences under Sections 405, 415, 420, 468 of the Indian Penal Code r/w 34 and 120 B of the Indian Penal Code. The contention of the petitioner is that the respondent bank has initiated false/vexatious criminal proceedings against them on the pretext that the petitioners have approached the respondent bank for availing a housing loan to a tune of Rs.11 lakhs in conspiracy and in collusion with the other accused namely A3 to A5.

3.The respondent bank had released falsely alleged house loan to the petitioners on the basis that the 1st petitioner is an employee working in the post of GCO in charge of OFFICERS Training Academy, Chennai and the 2nd petitioner is working as a Teacher in Municipal Middle School, Irumbuliyur. The power holder, V.Mahalakshmi, A5, W/o.Vallinayagam, Promoter, A4 in the capacity of Power of Attorney of A.G.Santhanam is said to have executed sale deed to the petitioners, who have entered into a builders agreements with the builder for constructing a flat and based on the application submitted by the petitioners. The loan was released in two stages totaling to Rs.11 lakhs. The 3rd accused, Murugan has stood as a guarantor to the petitioners, since the loan was defaulted, the bank had caused enquiry and found that the documents submitted by the petitioner based on which, the loan was sanctioned turned to be false and forged. In fact no such project had commenced. Hence, a private complaint against the petitioners has been filed by the bank, which has been taken on file as C.C.No.8800 of 2004. Aggrieved by the same, the petitioners had filed the above quash petition.

4.The contention of the learned counsel appearing for the petitioners is that the complaint filed by the respondent is a false complaint. The loan amount of Rs.9 lakhs and Rs.2 lakhs was received by A4 Vallinayagam, the builder and the case of the bank is that the builder had not constructed any apartment and received money from several banks for the same site of land. It is the 4th accused, Vallinayagam, is responsible for making the respondent bank to believe that he would construct and hand over apartment and as agreed to and only on that condition, the payments were made to A4. In fact it was the 1st petitioner who had informed the bank that the 4th accused did not construct and hand over any apartment to him. Hence, it is only the 4th accused, who had committed serious offence of breach of trust and cheating. The petitioners have no role in the complicity of the offence.

5.Further, the 5th accused, V.Mahalakshmi, wife of the 4th accused as Power Agent for the property had executed a sale deed of undivided share of 350 sq.ft. out of 2782 total sq.ft. in favour of 1st petitioner and 2nd petitioner. The further contention is that the 5th accused executed 19 sale deeds aggregating to a undivided share of 3397 sq.ft. against the total available land of 2782 sqft. It is also seen that three sale deeds were cancelled for a total extent of 375 sq.ft. Therefore, it is the 5th accused, who had executed sale deeds to an extent of 3397 sq.ft. out of the available land of 2782 sq.ft. Thus, it is the 5th accused, who had sold the lands, which is not exist and the respondent never accused the petitioners herein for the offence of cheating. The only allegation as against the petitioners is with regard to the veracity of the statements ought to have been made by them in the said salary certificates which turned to be a forged one and with the aid of criminal conspiracy and common intention the petitioners have been made as an accused.

6.The petitioners further to substantiate their contention had produced a letter of Deputy Secretary, Government of Tamil Nadu Letter No.96076/Ka.16/10-1, dated 21-12-2010, along with this letter a representation of the petitioners addressed to the Secretary to Government Home Department is enclosed. In the said letter, the petitioners have admitted about the submission of salary certificate, identity card, family ration card, school certificate, handing over of IDBI and UTI cheques and signing in blank green sheets and further admits that A4 Vallinayagam, had opened an account in the name of the petitioners and was in custody of the cheque book, using the same, the other accused had committed the above offence. Hence, the case against the petitioners in C.C.No.8800 of 2004 is liable to be quashed.

7.On going through the complaint and the typed set of papers, it is the categorical case of the respondent that though the 1st petitioner claims to be a GCO in charge of OFFICERS Training Academy, Chennai and the 2nd petitioner is working as a Teacher in Municipal Middle School, Irumbuliyur and in support of the same the salary certificates, loan was disbursed. The respondent thereafter, found out that the first petitioner was working as a Last Grade servant and not as GCO in charge of OFFICERS Training Academy as claimed in the application. Further, the salary certificate annexed to the same was not issued by the Office of OFFICERS Training Academy.

8.Further, the 2nd petitioner, who reported to be working in a school as a teacher was not working at all, thus, false statements have been given in the application and along with the false and forged documents. Further, the 3rd accused, who stood as a guarantor claims that he owns an immovable property at Muthamizh Nagar valued around Rs.12 lakhs was found that there is no such property. Hence, the petitioners loan was processed based on the forged documents and with false particulars furnished by them. At this state, it is pertinent to note that that the petitioners themselves have admitted that they have handed over the certificates, signed cheque books and signed papers to Vallinayagam, A4, the promoter of the project. The loan amount had been encashed by the said Vallinayagam. Thus, the petitioners have connived, conspired with other accused having common intention by submitting forged documents and thereby, made the bank to part with the public money of Rs.11 lakhs. Hence, the complicity of the accused in commission of the above offence at this stage has been made out and the petitioners had not made out any case to seek indulgence of this Court to quash the proceedings in the lower Court.

9.It is seen that the case is pending without any progress from the year 2004 for more than 14 years due to the pendency of the above case and the dilatory tactics adopted by the other accused. Hence, the trial court is directed to give priority in disposal of the above case as expeditiously as possible, more so, within a period of six months from the date of receipt of a copy of this order. The respondent bank namely Senior Manager, Indian Overseas Bank, Valmiki Nagar Branch, Thiruvanmiyur, Chennai - 600 041 to take earnest steps to complete the trial.

10.In view of the above finding the Criminal Original Petition filed by the petitioners stands dismissed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The XI Metropolitan Magistrate,
Saidapet, Chennai.

+1cc to Mr.G.MOHANKRISHNAN, Advocate, S.R.No. 45190

ORDER IN
Crl.O.P.No.3375 of 2011

BR(CO)
TR(25/07/2018)