BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 12.04.2018

DELIVERED ON : 26.06.2018

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. R.C.(MD)No.652 of 2016

C.Radhakrishnan .. Petitioner/Accused No.I

Vs.

1. The Inspector of Police,
   City Crime Branch,
   Tirunelveli City.
   (Crime No.24 of 2009)

2. C.Thanunatha Babu .. Respondents/Complainants
   (Second respondent impleaded
   as per order of this Court made in
   Crl.M.P.(MD)No.10531 of 2017 in Crl.R.C.(MD)No.652 of 2016
   dated 24.11.2017 by AMBAJ).

Prayer : This revision case is filed under Sections 397(1) r/w. 401 of Cr.P.C., to call for the records pertaining to the order in Cr.M.P.No.533 of 2016 in C.C.No.86 of 2013 dated 06.09.2016 passed by the learned Judicial Magistrate Court No.I, Tirunelveli and set aside the same.

For Petitioner : Mr.T.Lajapathi Roy
For Respondent No.1 : Mr.K.Suyambulinga Bharathi
Government Advocate (Crl. Side)
For Respondent No.2 : Mr.R.Ramanlal

ORDER

Heard Mr.T.Lajapathi Roy, learned counsel appearing for the petitioner, Mr.K.Suyambulinga Bharathi, learned Government Advocate (Crl. Side) appearing for the first respondent and Mr.R.Ramanlal, learned counsel appearing for the second respondent.

2.This revision case has been filed to set aside the order passed by the learned Judicial Magistrate Court No.I, Tirunelveli in Cr.M.P.No.533 of 2016 in C.C.No.86 of 2013 dated 06.09.2016. The petitioner is A1 and there was a civil dispute between the petitioner and his brother and three civil cases are pending before the Sub Court, Nagercoil and the petitioner is pressuring the complainant to withdraw the case and hence, the complainant has given a complaint before the first respondent. A case has been registered in Crime No.24 of 2009 under Sections 420 and 423 r/w. 120(b) of IPC.

3.On the side of the petitioner, it is stated that the property belongs to the complainant and it is alleged that with the motive to defraud the complainant, the petitioner has mortgaged the property with UCO Bank, Tirunelveli and that after obtaining the loan, the petitioner sold the mortgaged property to the third party without informing the Bank and that the Bank Official without verifying the correctness of the documents, issued notice to the petitioner, thereby the petitioner and A2 caused loss to the Bank. In this circumstances, the petitioner has filed a petition to discharge them from the case stating that the property was given only as a Collateral Security and a rectification deed was registered on 22.09.2009 and that the loan itself was already closed and that the property was released from the mortgage and the petitioner has not committed any mistake.

4.On the side of the first respondent, it is stated that after filing of charge sheet, the petitioner has filed a petition before the trial Court for discharge of the case and the trial Court has correctly dismissed the petition stating that a *prima facie* case is made out.

5.On the side of the first respondents, the learned counsel placed reliance on the Judgment of this Court in the case of ***State of TamilNadu by Inspector of Police Vigilance and Anti Corruption v. N.Suresh Rajan and Others*** reported in ***(2014) 1 MLJ (Crl) 315 (SC)***, which reads as follows:

> *"Held, at stage of application for discharge, Court to proceed with assumption that materials brought on record by prosecution is true - Court not to go deep into matter and hold that materials would not warrant conviction - If Court thinks that accused committed offence on basis of materials on record on its probative value, it can frame charges - Court required to see prima facie case for proceeding against accused - If trial Court satisfied the prima facie case made out, charge to be framed - Defect in investigation itself cannot be ground for discharge - While passing order of discharge, fact that accused assessed to income tax and paid income tax cannot be relied - Court wrong to appraise evidence and discharge Respondents as if passing order of acquittal."*

6.On the side of the first respondent, the learned counsel for the first respondent has placed reliance on the order passed by the Hon'ble Supreme Court in the case of ***P.Vijavan v. State of Kerala and Another*** reported in ***CDJ 2010 SC 110*** which reads as follows:

> *"After evaluating the materials produced by the prosecution and after considering the probability of the case, the Judge being satisfied by the existence of sufficient grounds against the appellant and another accused framed a charge. Whether the materials at the hands of the prosecution are sufficient or not are matters for trial. At this stage, it cannot be claimed that there is no sufficient ground for proceeding against the appellant and discharge is the only remedy."*

7.On the side of the second respondent, the learned counsel placed reliance on the order passed by the Hon'ble Supreme Court in the case of ***State of Tamil Nadu, Represented by the Inspector of Police, Central Crime Branch v. R.Vasanthi Stanley and Another***, reported in ***(2016) 1 Supreme Court Cases 376*** which reads as follows:

> *" Held, High Court was erroneously guided by ambit an sweep of power under Section 482 Cr.P.C., for quashing the proceedings - It absolutely fallaciously opined, that continuance of proceeding will be abuse of process of Court - It is accepted principle of handling of finance, that whenever there is manipulation and cleverly conceived contrivance to avail such kinds of benefits, it cannot be regarded as a case having overwhelmingly and predominatingly civil character"*

8.Records perused. It is seen from the records that there is a dispute between the petitioner and his brothers. The petitioner has admitted that he has created a rectification deed as the property belongs to his brother as and a mistake was crept in the earlier document. It is further stated that the petitioner has paid the entire loan amount.

9.It is stated that the petitioner borrowed a sum of Rs.96,50,000/- (Rupees Ninety Six Lakhs and Fifty Thousand only). The petitioner created mortgage deed regarding nine properties as mentioned in the schedule of properties. Some of the properties belongs to the elder brother of the petitioner. The elder brother wrote a letter to the Bank and the petitioner executed a rectification deed on 22.09.2009 and that the petitioner has already paid the entire loan amount and there is no prima facie case made out. The entire loan amount was settled and mortgage deed was cleared. But the petitioner has not filed any document to show that the Bank loan was already settled. As per the contention of the petitioner if the petitioner has already settled the amount, he can very well compromise the matter before the lower Court. On perusal of the order passed by the Hon'ble Supreme Court, it is seen that only prima facie case is necessary for framing charges, there need not be any grounds for conviction at this stage. From the available records, it is seen that there is something fishy in the way in which the petitioner has obtained the Bank loan. The petitioner has also filed a rectification deed admitting that there was a mistake in the earlier deed. In this circumstances, only after the trial of the case, the Court can decide whether the petitioner has committed any offence or not.

10.Hence, there is no need to interfere in the order passed by the lower Court. There is no merits in this petition. The criminal revision case is dismissed.

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No.I, Tirunelveli.

2. The Inspector of Police,
City Crime Branch,
Tirunelveli City.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 cc TO Mr.R.Ramanlal , Advocate in SR No. 70017

mrn
AE/SKN RSK/SAR1/05.07.2018/4P/5C

Crl. R.C.(MD)No.652 of 2016
26.06.2018