IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.648 of 2019
Crl.MP.Nos. 383 & 2636 of 2019

M.Sudha ... Petitioner/A1

Vs.

1. The State rep by
The Inspector of Police,
J-4, Kotturpuram Police Station,
Chennai. .. 1st Respondent/Complainant

2. R.Sathya ...2nd Respondent/Defacto Complainant

PRAYER:
Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in Crime No.1024 of 2018 on the file of first respondent police and quash the same as against the petitioner.

For Petitioner : Mr.R.Vivekananthan

For Respondents
For R1 : Mr.Mohammed Riyaz
Additional Public Prosecutor.

For R2 : Mr.K.Shyam Sunder

O R D E R

This Petition has been filed to quash the FIR in Crime No.1024 of 2018 on the file of the first respondent, registered for the offences under Section 3 r/w 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act 2003, and Section 420 of IPC, against the petitioner.

2. The learned counsel appearing for the petitioner submitted that the allegations averred in the complaint did not disclose any prima facie case as against the petitioner to register a case for the offence under Section 420 of IPC and

Section 3 r/w 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act. Further the entire avernments are vague and bereft of material, without even furnishing any reliable material for payment of exorbitant amount of Rs.20,14,750/- to the petitioner. During the end of December 2017, the defacto complainant borrowed a sum of Rs.4,25,000/- and thereafter a sum of Rs.10,00,000/- in the month of March, 2018. To repay the same, she issued two cheques in favour of the petitioner/A1 for a sum of Rs.4,99,200/- and Rs.10,00,000/- respectively, inclusive of interest drawn on State Bank of India. Both the cheques were returned dishonoured and as such the petitioner caused statutory notice to the second respondent. Immediately after receipt of the same, the present complaint has been foisted as against the petitioner. Therefore, he sought for quashment of the FIR.

3. Per contra, the learned counsel appearing for the second respondent submitted that the second respondent borrowed money from the petitioner on interest basis. Though she returned entire money with interest, the petitioner is charging for more interest. Further he submitted that it is the stage of FIR and it has to be investigated further to unearth the truth. Therefore, it cannot be quashed at this stage and prayed for dismissal of this petition.

4. The learned Additional Public Prosecutor submitted that the case has been registered for the offence under Section 420 of IPC and Section 3 r/w 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, as against the petitioner and another, in which the petitioner is arraigned as A1. The defacto complainant borrowed a loan from the accused persons and returned with interest. Even then, the petitioner and another accused are charging more exorbitant interest from the second respondent. Further he submitted that it is the stage of FIR and it has to be investigated further. Therefore, he prayed for dismissal of the quash petition.

5. Heard Mr.R.Vivekananthan, learned counsel appearing for the petitioner, Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the first respondent and Mr.K.Shyam Sunder, learned counsel appearing for the second respondent.

6. The petitioner arraigned as A1 and the case has been registered against two persons for the offences under Section 420 of IPC and Section 3 r/w 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act in Crime No. 1024 of 2018, on the file of the first respondent. The case of the complainant/ second respondent is that the she borrowed a sum of Rs.11,76,250/- from the petitioner/A1. The second respondent has re-paid a sum of Rs.20,14,750/- with an exorbitant interest.

Further alleging that the petitioner had also obtained two signed blank cheques and papers from the second respondent.

7. Admittedly, the second respondent did not furnish any reliable materials for payment of the exorbitant amount of Rs.20,14,750/- to the petitioner. Apart from that on two occasions, the second respondent borrowed heavy sum of Rs.11,76,250/-, from the petitioner. Towards the repayment of the same, the second respondent issued cheques bearing Nos. 123258 and 123259 for the said sum. The said cheques were presented for collection and they were returned dishonoured. Therefore, the petitioner caused statutory notice. Immediately after receipt of the notice, the present complaint has been lodged as against the petitioner and another.

8. In this regard, the learned counsel appearing for the petitioner cited a judgement of this Court passed in a batch of cases in Crl.O.P.No.4877 of 2018 dated 26.06.2018, in the case of "T.Karthikeyan and others Vs. The State rep by its Inspector of Police", which held as follows:-

> "10.The object of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, is to prohibit the charging of exorbitant interest by any person and matters incidental thereto. The scheme of the Act is to regulate and control collection of money in the name of daily vatti, hours vatti, kandhu vatti, meter vatti, thandal etc. As per the provisions of the Tamil Nadu Money Lenders Act, 1957, a money lender is a person whose main or subsidiary occupation is the business of advancing and realising loans. Further, an advance made on basis of a negotiable instrument exceeding Rs.10,000/-, will not fall under the definition of a loan. Therefore, a money lender, who makes an advance, on basis of a negotiable instrument exceeding Rs.10,000/- is not a person referred to under Section 3 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003. In other words, the debtor cannot lawfully complain of a demand of exorbitant interest, when a money lender advances a loan on the basis of negotiable instrument exceeding Rs.10,000/-.
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> 11. As per the provisions of the Tamil

Nadu Money Lenders Act, a money lender is a person, whose main or subsidiary occupation is a business of advancing and releasing loan. In the instant case, the petitioners main occupation was transport business and it is nobody's case that their main and subsidiary business was money lending. Therefore, the term 'person' referred to in Section 3 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 and the term 'money lender' referred to therein are not applicable to the petitioners herein. Incidentally, the petitioners herein had produced various copies of their transport business pertaining to Port Trust Licence, Coir Board License, Export and Import License, Income Tax Returns etc., and established that their main business was not money lending. As such, the FIR implicating the petitioners for offences under Sections 3 and 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 is prima facie not made out.

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13.The basis of the complaint is that the petitioners herein had demanded exorbitant interest and it is in this connection that they had allegedly indulged in various criminal activities. When the offence under the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 has not been made out, what remains is a mere civil dispute between the petitioners and the defacto complainant since the amount borrowed as well as the non repayment of the same is not under dispute. It would not be out of place to mention here that under Section 51 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, it is mandatory that the debtor to deposit the loan amount together with interest at the rate fixed by the Government under Section 7 of the Act into the jurisdictional Court before presentation of the petition for recording satisfaction of the loan. This proposition has been reiterated in Indiabulls Financial Services Ltd., Vs. Jubilee Plots and

Housing Private Limited reported in 2010 (2) LW 375

> "24.In the considered opinion of this Court, the word 'may' used under Section 5(1) of the Act would imply the option given to a debtor to approach the court with a petition to refer full or part satisfaction of the loan with interest. Once a debtor exercises his option to approach the court for such a purpose, a debtor, who presents a petition, is bound to deposit the money in respect of the loan received by him together with interest. Therefore, the expression 'may' employed under Section 5(1) does not mean by any stretch of imagination that deposit of money while presenting a petition is always at the option of a debtor. If such an import is given to the aforesaid provision of law, no debtor would be inclined to deposit the loan amount with interest to get a relief within the time frame fixed under Section 5(2) of the Act. Consequently, it would be a mockery if the debtor, who has not chosen to show his bona-fides by depositing the money due in respect of the loan with interest, is permitted to seek for a remedy by just filing a petition. The provision under Section 5(2) of the Act speaks of an inquiry and passing of an order recording the satisfaction of the loan and interest therefore in full or part. If the amount due in respect of the loan with interest therein is not deposited as contemplated under Section 5(1) of the Act, the court may not be in a position to record in full or part satisfaction of the loan."

9. In the case on hand, to escape from the clutches of proceedings for the offence punishable under Section 138 of Negotiable Instruments Act, the present complaint has been lodged as against the petitioner. Further the provisions of the

Money Laundering Act are not attracted as against the petitioner, as discussed in the above judgment. Therefore, entire complaint has been vitiated and it is clear abuse in process of law. Therefore, the complaint has no legs to stand further and liable to be quashed.

10. Accordingly, this Criminal Original Petition stands allowed and the FIR in Crime No.1024 of 2018, on the file of the first respondent is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
   J-4, Kotturpuram Police Station,
   Chennai.

2. The Public Prosecutor,
   High Court of Madras,
   Chennai.

+1cc to Mr.K.Shyam Sunder, Advocate, S.R.No.20686

+1cc to Mr.R.Vivekananthan, Advocate, S.R.No.31792 (02/04/2019)

Crl.O.P.No.648 of 2019 and
Crl.MP.Nos. 383 & 2636 of 2019

SV(CO)
CS/01/04/2019