

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2019

CORAM:

THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.8907 of 2008
and
M.P.No.1 of 2008

[Orders Reserved on 23.08.2018]

1.Bayappureddy Shashidhar Reddy
2.Mrs.B.Hymavathi Reddy Petitioners

Vs.

Kotak Mahindra Bank Ltd.,
Rep.by its Authorized Signatory
Mr.V.Prabhakaran
Chennai Respondent

PRAYER: Petition is filed under Section 482 of Criminal Procedure Code, praying to call for the records and quash all proceedings in C.C.No.7365 of 2007, on the file of XVII Metropolitan Magistrate, Saidapet, Chennai.

For Petitioners : Mr.D.Prasanna
For M/s.P.V.S.Giridhar & Sri Associates

For Respondent : No Appearance

ORDER

This Criminal Original Petition has been filed praying to quash all proceedings in C.C.No.7365 of 2007, on the file of XVII Metropolitan Magistrate, Saidapet, Chennai.

2. The brief facts leading to filing of the present Criminal Original Petition are as follows:-

The respondent is running a banking institution dealing with providing financial assistance to public. The respondent Bank, based on the request and documents furnished by the petitioner, had disbursed loan to the tune of Rs.7,50,000/-, vide Agreement No.883581, on 27.01.2005. The petitioners, after availing the loan, deliberately defaulted in repaying the loan amount despite

repeated remainders from the respondent Bank. Hence, the respondent Bank lodged a complaint under Section 200 of Cr.P.C., before the XVII Metropolitan Magistrate, Saidapet, Chennai, which was taken on file as C.C.No.7365 of 2007.

3. The learned counsel appearing for the petitioners would submit that the complaint had been filed in order to harass and extract money from the petitioners. The dispute is a pure civil dispute and none of ingredients of the offences alleged to have been committed are available for the purpose of initiating a criminal proceeding. He would further submit that the loan was availed in Hyderabad in Andhra Pradesh and no part of the transaction occurred in Chennai. As such, the learned VII Metropolitan Magistrate, Saidapet, has no territorial jurisdiction to issue summons to the petitioners and try the case. The learned counsel, in support of his contentions, has relied on a decision of the Hon'ble Apex Court in Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others reported in (2007) 12 SCC).

4. According to the respondent Bank/ Complainant, based on the request and documents furnished by the petitioners, the respondent Bank disbursed the loan to the tune of Rs.7,50,000/- and after availing the same, the petitioners deliberately defaulted in repaying the loan amount, despite they have the capacity to repay the same, is the main contention of the respondent. Further, the acts were committed by the petitioners in the office of the respondent ie., at Chennai, and all these offenses have occurred within the jurisdiction of the said Court and the said Court has jurisdiction to deal with the same.

5. I have heard the learned counsel appearing for the petitioners and perused the materials available on record. There is no representation for the respondent even today.

6. Keeping pending the above case, which is of nearly 10 years old would only compound to pending of the case without any progress. Hence, the case is taken up for disposal, on merits, with the materials available.

7. Admittedly, the respondent is running a banking institution dealing with providing financial assistance to public. On the request and documents furnished by the petitioners, the respondent Bank disbursed the loan to the tune of Rs.7,50,000/- and after availing the same, the petitioners deliberately defaulted in repaying the loan amount, despite they have the capacity to repay the same, is the main contention of the respondent.

8. Considering the allegations and counter allegations and with reference to the prayer made in the petition, the following two questions arise for consideration by this Court.

(i) Whether this Court has territorial jurisdiction to entertain the application for the purpose of quashing the charge sheet?

(ii) Whether the dispute is of civil nature or not?

9. Insofar as the first ground is concerned, no doubt, the petitioners are the resident of Hyderabad, Andhrapradesh and residing there. According to the respondent / complainant, the petitioners came to the place of complainant ie. Chennai, Tamil Nadu and signed the documents. I am of the view that the Court has the territorial jurisdiction to entertain the application, as a major part of the cause of action having arisen within the State of Tamil Nadu.

10. The second question that arises for consideration in this case is whether the dispute is civil in nature or not is concerned, the petitioners having availed financial assistance on representation to repay the same and failing to do so would amount to cheating. On perusal of the materials, it is seen that the petitioner has intentionally cheated the Bank. The decision of Apex Court relied on by the petitioner reported in (2007) 12 SCC (cited supra) is not applicable to the facts of the present case.

11. In view of the above, the Criminal Original Petition stands dismissed. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

MPK
To

The XVII Metropolitan Magistrate,
Saidapet, Chennai.

+1cc to M/S.Giridhar & Sai Advocate Sr.1374

Crl.O.P.No.8907 of 2008

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srg 05/02/2019