IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.11.2018

DELIVERED ON : 22.03.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.11469 of 2010
and
M.P.No.1 of 2010

1.K.V.Narendran
S/o.Bhaskaran

2.Usha Narendran
W/o.K.V.Narendran

3.N.M.Nalainthran
S/o.Manikavasagam

4.Indradevi
W/o.N.M.Nalainthran ...Petitioners

vs

1.State by
Sub-Inspector of Police,
Central Crime Branch,
Egmore, Chennai - 8.

2.The Chief Manager,
Corporation Bank,
No.22, North Mada Street,
Mylapore, Chennai - 4. ... Respondents

(R2 impleaded as per order in Crl.M.P.No.5728 of 2017 in Crl.O.P.No.11469 of 2010 dated 07.09.2018)

Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for records in C.C.No.6615 of 2007 on the file of learned XI Metropolitan Magistrate, Saidapet, Chennai and quash the same.

For Petitioners: Mr.S.Shanmugavelayutham,
senior counsel for Mr.B.L.S.Prasad

For Respondents: Mrs.V.Saratha Devi,
Government Advocate [Crl.side] [R1]
Mr.S.Sethuraman [R2]

O R D E R

Petitioners seek quash of proceedings in C.C.No.6615 of 2007 on the file of learned XI Metropolitan Magistrate, Saidapet, Chennai.

2. Petitioners are arrayed as A1 to A4 in C.C.No.6615 of 2007 on the file of learned XI Metropolitan Magistrate, Saidapet, Chennai, for offences u/s.420, 465, 468, 471 r/w 34 IPC, now pending on the file of CCB & CBCID Special Court, Allikulam. Second petitioner is the wife of first petitioner and fourth petitioner is the wife of third petitioner. Second respondent has preferred a complaint to the first respondent informing that accused, by producing fabricated and forged documents, obtained housing loan from the Bank; A1 and A3 to the tune of Rs.24,50,000/- and Rs.17,00,000/- and A2 and A4 to the tune of Rs.18,50,000/- and Rs.15,00,000/-. Since accused defaulted in repayment, the Bank verified the documents and found that the documents submitted by them are forged and fabricated. On the complaint of second respondent, a case in Crime No.755 of 2005 was registered. Upon completion of investigation, a charge sheet was filed informing commission of offences u/s.420, 465, 468 and 471 r/w 34 IPC.

3. Heard learned senior counsel for petitioners, learned Government Advocate for first respondent and learned counsel for second respondent.

4. Learned senior counsel for petitioners submitted that the Bank has afforded loan to the petitioners upon due verification of documents. A1 is the proprietor of M/s.Frontline Cargo Movers, he is the freelance Consultant in the field of export and import of food grains and other commodities and he is also Proprietor of M/s.MICRO INFO-TECH, a computer firm. As there were some unforeseen loss in the business, petitioners were unable to make some installments. The title deeds of the flats have been deposited with the Bank. It is also accepted by Bank that repayments have been made for certain period. Further, A3 and A4 are employees of State Bank of India and Metro Water and in proof of their salary, Form-16 had been submitted and the Investigation Officer visited their office and found that they

are in employment. The Income-Tax officials admitted to assessing the Income-Tax Returns of A1 and A2 and that M/s.MICRO INFO TECH is a registered firm and the registration certificate of Directorate of Industries, Government of Tamil Nadu D.Dis.13397/CA8/96 has been produced and hence, the documents submitted by them are not forged one. The builders of the flat promoters have been examined. Flat promoters have also spoken about the purchase of the flats by petitioners. Moreover, when the Bank has realized the loan amount through sale of flats of accused to third parties, it is not fair on the part of the Bank to pursue the complaint.

5. Learned Government Advocate appearing for first respondent submitted that on the basis of the complaint given by the de facto complainant's Bank, a case was registered in Crime No.755 of 2005 on the file of first respondent and after examining LWs.1 to 10 and collecting relevant documents and upon completion of investigation, a charge sheet was filed informing commission of offences u/s.420, 465, 468 and 471 r/w 34 IPC. Learned Government Advocate submitted that there are sufficient materials to proceed against the petitioners and the petitioners have to prove their innocence during trial. Submitting as above, learned Government Advocate prayed for dismissal of the present petition.

6. Learned counsel for the second respondent Bank submitted that the petitioner had availed housing loan. Though initially they have made some payments, thereafter they have failed to do so and they were also not available in the addresses given to the Bank. A1, by producing forged Demand Drafts, had made the Bank to credit huge sums of money to his account and from that amount, housing loan payment has been made. Learned counsel further submitted that all the accused have joined together and cheated the bank by producing forged documents.

7. This Court has considered the rival submissions.

8. On a perusal of the materials available, this Court finds that four flats for which housing loan was given to the accused were taken possession by the Bank and the same were sold by Bank to third parties and they had utilized the amount of Rs.63,25,000/-. EMI to the tune of Rs.6,70,000/- had already been paid and the margin is 15% i.e. Rs.12,51,200/- and totally, an amount of Rs.82,56,200/- have been realized of which the claim of the Bank towards the loan amount is Rs.69,20,000/- only. In fact, according to the petitioners, the Bank has got excess amount of Rs.13,36,200/- which the Bank has to pay to the petitioners. Be that as it may, the Bank has taken possession and sold the flats to third parties and realized the amount.

There seems to be some dispute between the petitioner and the Bank with regard to the amount realized, recovered and credited, which could not be decided by way of a criminal case. Further, none of the documents produced were found to be forged and the genuineness thereof has been admitted by the witnesses examined. A3 and A4 are employees of State Bank of India and Metro Water Department respectively. Their Form -16 have been found to be genuine and they are wives of A1 and A2. Other than this they have nothing to do with the loan transaction. Further, A1 is the proprietor of M/s.Frontline (Regd) Cargo Movers and A2 is an employee thereof. The existence of the said company has been spoken to by Assistant Registrar of Firms, Income-tax Department and others. Hence, the Form-16 is acceptable. Just because accused have defaulted in repayment, it could not be said that the accused had committed cheating and misappropriation on the strength of forged documents. Where the money due to the Bank had been realized through sale of flats of accused and where none of the documents can be said to be forged and given the position that on the materials available, no forgery and cheating was said to have been committed by the petitioners, there is no point in prosecuting the petitioners further.

The Criminal Original Petition shall stand allowed and the proceedings in C.C.No.6615 of 2007 on the file of learned XI Metropolitan Magistrate, Saidapet, Chennai, shall stand quashed. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gm

To

The XI Metropolitan Magistrate,
Saidapet,
Chennai.

+1cc to Mr.S.Sethuraman, Advocate Sr.28075

Crl.O.P.No.11469 of 2010

mp[co]
srg 8/5/2019