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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

Crl.O.P.No.11696 of 2017
and
Crl.M.P.No.7661 of 2017

1. R.Selvaraju

2. Vimala Selvaraju

3. R.S.Sharmila

4. S.Nirmala

...Petitioners

Vs

1. State represented by
Inspector of Police,
F1 Chidambaram Town Police Station,
Chidambaram.
(Crime No.321 of 2017)

2. T.K.Subramaniyan

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records pertaining to Cr.No.321 of 2017 on the file of the Inspector of Police, F1, Chidambaram Town Police Station, Chidambaram as against the petitioners and quash the same.

For Petitioners : Mr.R.Krishnamoorthy, Senior Counsel
for Mr.V.Balamurugane

For Respondents : Mr.C.Iyyapparaj
Additional Public Prosecutor
for R1
Mrs.L.Poompavai
for R2

O R D E R

The prayer sought for in the present petition is to call for the records pertaining to Crime.No.321 of 2017 on the file of the 1st respondent herein as against the petitioners and quash the same.



2. It is stated by the learned Senior Counsel appearing for the petitioners that the petitioners had availed a loan on 22.08.2008 for a sum of Rs.72,00,000/- and mortgaged three properties including the property in Plot No.24, Kamarajar Street, V.G.N.Nagar, Phase IV, Nolambur Chennai - 600037, which loan came to be fully repaid and the loan account was also closed on 29.03.2010. The certificate issued by the 2nd respondent's Bank ratifying the closure of the loan account is also produced before this Court. The second loan for a sum of Rs.75,00,000/- was obtained by the petitioners and the 2nd respondent's Bank had issued a letter dated 02.04.2016, stating that the term loan availed by the petitioners has been repaid fully and finally.

3. In this background, the impugned complaint has been made, which has been registered in FIR.No.321 of 2017 for offences under Sections 418 and 420 IPC, on the ground that when the mortgage was in subsistence, the petitioners had sold one of the properties referred above.

4. Sections 418 and 420 of the Indian Penal Code reads as follows:

418. Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect - Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

420. Cheating and dishonestly inducing delivery of property - Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

5. The definition of the term 'Cheating' under Section 415 IPC is as follows:

415. Cheating - Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any



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property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

6. The learned counsel for the 2nd respondent had filed a counter affidavit dated 26.11.2019 and by reiterating the averments made therein, submitted that the petitioners had defaulted payment of term loans in time and that there were many loans obtained by the petitioners. She would further submit that there were various defaults and delays in repayment of the loan amounts and as such, the sale deeds dated 17.03.2010 and 24.03.2010 would attract the offences in the impugned FIR.

7. One of the main ingredients to construe the offence of cheating for the purpose of holding a person guilty is that the ingredients of the complaint should necessarily show that such a person had fraudulent or dishonest intention at the inception itself. The Hon'ble Apex Court in the decision reported in (2000) 4 SCC 168 in the case of Hridaya Ranjan Prasad Verma vs State of Bihar had held that in order to construe the offence of cheating, the following requirements are mandatory.

- (1) deception of any person;
- (2) fraudulently or dishonestly inducing the person to deliver any property to any person or to consent that any person shall retain any property or intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person.

8. In the instant case, there was no such intention to deceive, in view of the facts that the petitioners herein had availed the loan on 22.08.2008, which was repaid as full and final settlement and also ratified by the 2nd respondent through their certificate. The subsequent selling of the property after the loan was fully repaid will not amount to an act of fraudulent or dishonest intention. Likewise, the second loan was also closed by the petitioners herein, which has been ratified by the 2nd respondent herein.

9. In the absence of all these main ingredients, the offence of cheating will not be made out at all. As such, any continuation of the criminal investigation may not be permissible.



10. In the light of the above observations, the investigation in FIR.No.321 of 2017 on the file of the 1st respondent herein, stands quashed. Accordingly, the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

hvk

To

1. The Inspector of Police,
F1 Chidambaram Town Police Station,
Chidambaram.
2. The Public Prosecutor,
High Court of Madras.

+5cc to Mr.V.Balamurugane, Advocate, S.R.No. 98325

Crl.O.P.No.11696 of 2017
and
Crl.M.P.No.7661 of 2017

MP(CO)
GN(30/01/2020)