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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 28.11.2019
CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN
Crl.O.P.(MD)Nos.12816 and 13290 of 2015 and
M.P.(MD)Nos.1 and 2 of 2015 and
Crl.M.P.(MD)No.9732 of 2016

CRL.O.P.(MD)No.12816 of 2015

PR.Valliappan,
Now working as Manager,
ICICI Bank,
St. Thomas Mount Branch,
Chennai.

... Petitioner/Accused No.4

Vs.

1. The Inspector of Police,
Central Crime Branch,
Madurai City.

...1st Respondent/Complainant

2. K.Gunasekaran

... 2nd Respondent/
Defacto Complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for the records in C.C.No.215 of 2011 on the file of the Judicial Magistrate No.I, Madurai, in so far as the petitioner is concerned and quash the same.

Crl.O.P.(MD)No.13290 of 2015

1. Kathirvel
2. Balamuruganantham
3. Vetrivelkannan

... Petitioners/Accused Nos.1 to 3

Vs.

1. The Inspector of Police,
Central Crime Branch,
Madurai City.

... 1st Respondent/Complainant

2. K.Gunasekaran

... 2nd Respondent/
Defacto Complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for the records in C.C.No.215 of 2011 on the file of the Judicial Magistrate No.I, Madurai and quash the same in so far as the petitioners are concerned on the ground of abuse of process of law.



(in both Crl.O.Ps.)

For Petitioners : Mr.D.Sadiq Raja
in Crl.O.P.(MD)No.12816 of 2015.

Mr.P.Thirumahilmaran
in Crl.O.P.(MD)No.13290 of 2015.

For R-1 : Mr.A.Robinson,
Government Advocate(Crl. Side).

For R-2 : Mr.T.A.Ebenezer

* * *

COMMON ORDER

The petitioners herein are facing trial in C.C.No.215 of 2011 on the file of the Judicial Magistrate No.1, Madurai.

2. The defacto complainant in this case is one Gunasekaran. The said Gunasekaran was a partner in Mappilai Vinayagar Roller Floor Mills. The other partners in the said firm are Kathirvel, Balamuruganantham and Vetrivelkannan. Loan was raised by the firm by mortgaging not only its property but also all the properties of the partners. Gunasekaran had also mortgaged 10 items. The mortgage was originally with the State Bank of India. It appears that the said loan transaction could not be serviced properly. The State Bank of India initiated proceedings under the SARFAESI Act. Therefore left with no other option, the firm approached the ICICI Bank. ICICI Bank took over the entire account on 12.02.2007. It is not in dispute that the said loan account has also been settled in full by January 2012. In the meanwhile, the relationship between Gunasekaran and the other partners, namely, Kathirvel, Balamuruganantham and Vetrivelkannan came under strain. Therefore, Gunasekaran filed a criminal case before the Inspector of Police, Central Crime Branch, Madurai City and the same was registered in Crime No.74 of 2009. It was taken up for investigation and final report was filed before the Judicial Magistrate No.1, Madurai and cognizance of the offences under Sections 465, 467, 468, 471 and 420 of I.P.C. was taken and the case was taken on file in C.C.No.215 of 2011. To quash the same, this criminal original petition has been filed.

3. Heard the learned Senior counsel appearing for the petitioners in Crl.O.P.(MD)No.13290 of 2015 and the learned counsel appearing for the accused in Crl.O.P.(MD)No.12816 of 2015 and the learned Government Advocate(Crl. Side) appearing for the first respondent and also the learned counsel appearing for the defacto complainant.

4. The core contention of the defacto complainant is that the title documents were taken back by him from the State Bank of India and that they were stolen by the other partners and unlawfully and fraudulently mortgaged with ICICI Bank. His grievance is that since



ICICI bank had not returned the title documents, even though he had executed sale deeds , the purchasers are unable to deal with the same for want of the parent documents. He would also allege that his signatures have been fraudulently affixed in the consent letters that were said to have been produced before the ICICI Bank.

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5. It is not in dispute that the defacto complainant had given another criminal case against his erstwhile partners, namely, Kathirvel and others. It is not the subject matter of this criminal original petition. Likewise, several proceedings are also said to be pending between the parties.

6. I am of the view that the core grievance of the defacto complainant would stand more than addressed if he gets back the title documents and if he is paid nominal litigation expenses.

7. In this regard, ICICI Bank was called upon to make a statement before me. The ICICI Bank appeared before me through its official and stated that since the entire loan amount has been settled in full, they have no objection whatsoever for returning the original title documents to Thiru.K.Gunasekaran. The learned counsel states that Thiru.Gunasekaran can approach them at any moment and take back the documents, after giving due acknowledgement. Likewise the learned senior counsel appearing for the petitioners in Crl.O.P. (MD)No.13290 of 2015 states that the petitioners would take a DD for a sum of Rs.50,000/- (Rupees Fifty Thousand only) favouring Thiru.K.Gunasekaran and hand over the same before the counsel within a period of one week from the date of receipt of a copy of this order. Since the core grievance of K.Gunasekaran have been adequately addressed, continuance of the impugned prosecution is not really warranted.

8. In this view of the matter, the impugned prosecution stands quashed. The criminal original petitions stand allowed. It is made clear that none of the petitioners can take advantage of this order in any other proceedings and that the respective rights of the parties will be entirely dealt with on their own merits in those proceedings. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

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/ /2020

Sub Assistant Registrar(CS)



To:

1. The Judicial Magistrate No.I,
Madurai.

2. The Inspector of Police,
Central Crime Branch,
Madurai City.

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

+ 1cc to Mr.T.A.Ebenezer ,Advocate, SR No. 103067

Cr1.O.P.(MD)Nos.12816 & 13290 of 2015
28.11.2019

KK(08.06.2020) 4P 5C