BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.03.2019

PRONOUNCED ON : 22.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

Crl.O.P.[MD]No.11083 of 2018

and Crl.MP(MD) No.5024 of 2018

1.Srinivas Acharya
2.S.Rajagopal
3.R.Srinivasan
4.V.Sudarshan : Petitioners / Accused Nos.1 to 4

Vs.

1.The State represented by
The Inspector of Police,
CCB Police Station,
Tirunelveli District.
(In Crime No.09 of 2017) : 1st Respondent / Complainant

2.V.Somasundaram :2nd Respondent / Defacto Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records relating to the FIR in Crime No.09 of 2017 on the file of the first respondent police and quash the same as illegal.

For Petitioners : Mr.M.E.Ilango

For R1 : Mr.A.P.G.Ohm Chairma Prabhu
Government Advocate (criminal side)

For R2 : Mr.R.Anand

O R D E R

The present petition is filed to quash a FIR registered by the first respondent-Police in Crime No.9/2017 dated 31.7.2017, against the petitioners under Section 409 Cr.P.C.

2. The quintessence of the allegation made in the FIR may be bullet-pointed as below :

- The second respondent/ *defacto* complainant (henceforth would be referred to as the Complainant) had borrowed a sum of Rs.1.0 Crore from M/s.Sundaram BNP Paribas Home Finance Limited, (henceforth would be referred to as SHF, for convenience) under a loan agreement dated 15.03.2006, and in terms of the said agreement, the loan dues with interest has to be paid in 120 Equated Monthly Instalments (EMI), at Rs.1,37,555/- per instalment. Initially, SHF charged 11% interest on the sum advanced, but periodically it increased the interest-rate arbitrarily.

- Apart from the loan referred to above, SHF had advanced another loan of Rs.5.0 crores, and yet another loan of Rs.1.50 crores, respectively under loan agreements dated 29.08.2008 and 31.05.2010. These agreements too stipulated that the principal amount and the interest payable on them should be in 120 EMIs.

- Whereas the first loan of Rs.1.0 crore advanced on 15.03.2006, carried an interest at 11% per annum, for the second loan of Rs.5 crore, the agreement provided for a fixed interest at 17% per annum. However, SHF has collected a total sum of 24% per annum in all. This is plainly usurious. In all, the complainant had borrowed a total sum of Rs. 7.50 crores, out of which he had paid Rs.5,63,00,792.33, till 30.11.2012.

- Be that as it may, on 30.11.2012, SHF declared the loan advanced to the complainant as a Non-Performing Asset (NPA) with effect from 30.11.2012.

- Upon declaring the loan to the complainant as NPA, the SHF invoked the provisions of SARFAESI Act, and took physical possession of some of the commercial buildings in the Commercial Complex of the complainant, and others it took symbolic possession.

- While so, sometime during the first week of September, 2014, petitioners 1 to 3 herein approached the Complainant, and promised to him that they would hand over the keys of two of the commercial buildings that SHF had taken possession of, if the complainant pay the entire EMI that fell due till September, 2014, in respect of all the three loan accounts referred to above. Trusting the same, the Complainant paid a sum of Rs.4,21,72,769/-, being the EMI amount due payable till September, 2014. From October, 2014, the Complainant began to pay the EMI dues without fault.

- Despite receiving the EMI amount, SHF did not hand over the keys of the premises as promised. Clearly, SHF and more particularly, the petitioners herein had laid a trap for the Complainant to walk in. In the process, they have denied the Complainant to profitably lease out the locked premises to the tenants, which implied that SHF forced the Complainant to suffer substantial business-loss in rental income. This has forced the complainant to pre-close the loan account when he paid a sum of Rs.5,76,79,994/-, and another sum of Rs.60.0 lakhs towards full and final settlement of all the loan accounts.

- In terms of the loan accounts, the Complaint was required to pay only Rs.14,61,81,280/- toward repayment of all the three loans, whereas the SHF had received a sum of Rs.16,89,68,782/-. As indicated earlier, it has charged interest at 24%.

A FIR was registered against the petitioners for an offence under Sec.409 IPC, though the Complainant had suggestively indicted in the complaint that the petitioners have committed offences under Sec.120(B), 409 and 420 r/w. Sec.34 of IPC and under Section 4 of the Tamil Nadu Prohibition of Exorbitant Interest Act.

3.The petitioners allege that the allegations in the FIR hardly create an offence under Sec.409 IPC, as the narrative in the FIR does not satisfy the ingredients required to constitute an offence under the same. They then proceeded to allege:

- When SHF invoked the provisions of SARFAESI Act, and took symbolic possession of some ofthe premises, the complainant approached this Court with WP(MD) Nos.272 & 273 of 2013, but lost them. When, the SHF attempted to take physical possession of the said assets, the complainant approached the Debts Recovery Tribunal (DRT), Madrurai with O.A.100/2014. The Tribunal passed a conditional Order, restraining SHF from taking physical possession of the secured assets, but, the complainant defaulted in performing the conditions stipulated. Hence, on 31.07.2014, SHF took possession of the secured properties. Thereafter, two of the tenants of the complainant approached this Court WP(MD) Nos.12610/2014 and 12611/2014, in which the tenants had given some undertaking, acting on which both the writ petitions came to be disposed of by separate Orders., dated 13-08-2014, by a Division Bench of this Court at its Madurai Bench.

- Be that as it may, the Complainant himself approached this Court in WP.(MD)No.8153 of 2014, challenging the constitutional validity of the SARFAESI Act, and that same came to be dismissed. Having failed in all the attempts, the defacto complainant chose to close all the three loans referred to above, and indeed had closed them on 31.03.2016, after accepting a waiver of Rs.39.26 lakhs.

- In terms of the FIR, the entire allegations are directed only against the SHF, which is a registered Company, and not against the petitioners in their individual capacity.

4. Heard the learned counsels appearing for the respective parties.

5.1 The learned counsel for the petitioners would submit that through his Complaint, the second respondent attempts to present an innocent face when he concealed at least two facts:

a) About the writ petitions that he had unsuccessfully filed; and
b) The full settlement of the amount only after accepting a loan waiver of Rs.39.26 lakhs.

Having accepted a loan waiver, and having paid the entire sum in full settlement of the loan transaction, it is not given to the petitioners to rake up an issue one year after the full settlement of the loans, and foist a false complaint against the petitioners. Secondly, none of the allegations made in the FIR satisfy the ingredients of Section 409 IPC . At any rate, there is no allegation that these petitioners are either a public servant, or a merchant, or were they entrusted with any property, or that they have converted anything entrusted with them for the purposes other than the one for which the money was entrusted.

5.2 The act of the complainant in setting criminal law in motion is bristled with malafides in terms of the authoritative pronouncement of the Hon'ble Supreme Court in ***State of Haryana Vs. Bhajan Lal*** [(1992) Supp 1 SCC 335], and hence the FIR has to be quashed.

6. The learned counsel for the second respondent argued vehemently that it is only after the full settlement, the mischief played by the petitioners became evident. Therefore, he has every cause to invoke the criminal law. He relied on the judgment of this Court in Crl.OP.No.23639 of 2015 dated 07.04.2016 [***Sudhir Khanna & Others Vs. The State, Rep. By the Inspector of Police, B1, North Beach Police Station, Rajaji Salai, Chennai].***

7.1 This Court finds merit in the submissions of the learned counsel for the petitioners. In a series loan transactions between the Complainant and the SHF, the crime now alleged relates to the amount repaid by the debtor to the creditor. The amount that the Complainant had left with his creditor SHF was not his money entrusted with the latter for a specified purpose, but the money belonged to the latter.

7.2 The petitioners are the personnels through who SHF functions. Except one statement in the FIR that sometime in first week of September, 2014, the petitioners 1 to 3 had approached the Complainant and promised to deliver back the possession of the premises that SHF had taken possession of under the SARFAESI Act, if the Complainant paid the entire loan dues payable in Equated Monthly Installments up till then, there is no other specific overt act attributed to any.

7.3 The second part of the accusation is over charing of interest which led to Complainant paying far in excess of the amount due to be paid by the Complainant in terms of the loan agreements. To be specific, the allegation is that interest on loan was charged exorbitantly, over and above the contract-rate of interest. This is however, something to do with (a) Understanding the terms of the loan agreement; (b) Construction of the loan agreement, if required; and (c) Reworking the amount payable by the Complainant in terms of the loan agreement. Considering each of the factors either separately or in combination is essentially one of civil in nature. Indeed, it is an admitted case that the Complainant was in default in paying his EMI dues, and that he has closed the loan transactions only after his creditor, the SHF had taken possession of his assets under SARFAESI Act, and to the allegation that at the point of closure of loan accounts in full settlement, the Complainant was given a waiver of Rs.39.26 lakhs, there is no response from the Complainant either. Did the Complainant then finally settle his dues after enjoying a discount of about Rs.39.26 lakhs without even checking the accounts?

8.1 This Court generally does not invoke Sec.482 Cr.P.C. to quash an FIR, except in circumstances enumerated by the Hon'ble Supreme Court in ***State of Haryana Vs Bajan Lal*** [1192 Supp (1) SCC 335]. The oft quoted, instructive guidelines of the Hon'ble Supreme Court read:

> " *The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482 Cr.PC can be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised :*
>
> 1) *Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
>
> 2) *Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*

3) *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

4) *Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*

5) *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

6) *Where there is an express legal bar engrafted in any of the provisions of the Code of the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

7) *Where a criminal proceedings is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.*"

8.2 If the case at hand is spread on the plane of these guidelines, at least three circumstances stands out for this court to interfere with the FIR:

a) The allegations *ex facie* does not disclose any offence, much less an offence under Sec.409 IPC. More specifically, there is hardly any specific accusation as could give rise to a liability in criminal law is seen made against the petitioners in the FIR.

b) The allegations in the FIR, if taken on its face value, at the best only disclose a possible dispute in civil law and not one that gives rise to a criminal liability.

c) Thirdly, given the circumstances where the Complainant had suppressed few writ petitions that he had filed, the fact about the discount given by his creditor at the time when he fully settled his loan dues, and preferring the Complaint a year after the said full settlement, cumulatively indicates that an element of malafide is operating to trigger his criminal accusations.

9. In conclusion, this Court holds that this is a case where this Court necessarily have to invoke its powers under Sec.482 Cr.P.C. and accordingly invokes it, and quashes the FIR in Crime No.09 of 2017 on the file of CCB Police Station, Tirunelveli District.

10. With the above observations, this petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar(CS)

CM/ds

To:

1.The The Inspector of Police,
CCB Police Station,
Tirunelveli District.

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

+1 CC to M/s.M.E.ILANGO, Advocate (SR-100744[F] dated 22/11/2019)

Crl.O.P.[MD]No.11083 of 2018
22.11.2019

KK/SAR/13.12.2019/7P-4C/