IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.08.2020
PRONOUNCED ON : 16.10.2020

CORAM

THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

Crl.O.P.No.10215 of 2015 and
Crl.M.P.No.1 of 2015

Singanamala Ramesh Babu ... Petitioner

Vs.

1.State, Rep. by Inspector of Police,
CCB, EDF-I, Team-II,
Vepery, Chennai-600 007.

2.V.G.B.Sivaram Prasad ... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the entire records and quash the proceedings in FIR No.70 of 2015 pending before the 1st respondent, on the file of the Inspector of Police, CCB, EDF-I, Team-II, Vepery, Chennai-7 with respect to accused.

For Petitioner	:	Mr.M.Kempraj
For R1	:	Mr.C.Iyyappa Raj, Additional Public Prosecutor
For R2	:	Mr.P.Ravishankar

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ORDER

The petitioner/accused in Crime No.70 of 2015, pending on the file of the 1st respondent Police, for offence under Sections 406, 420, 506(i) and

120(b) IPC, has filed the quash petition.

2.The 2nd respondent/defacto complainant viz., V.G.B.Sivaram Prasad lodged a complaint with the 1st respondent that he is a business man, doing business in the name of M/s.Sri Vijayalakshmi Ice Factory at No.7/50, South West Boagh, T.Nagar, Chennai and having residence in the same place. During March 2007, the petitioner represented through his common friend V.Radha Narasimha Rao that the petitioner is doing finance business at D5, Vaisalai Apartment, No.17, Dr.Nair Road, T.Nagar, Chennai for many years and he is in need of money of Rs.75 lakhs for his business and promised that it would be returned back within 5 months. Believing the words till October 2007, the 2nd respondent paid a sum of Rs.55 lakhs to the petitioner by way of cash and cheque. On receipt of the same, the petitioner assured that he will give back the money within five months and also represented that he was having many properties at T.Nagar, Porur, OMR-Poonjeri Village, Vaisahvakkan, Hyderabad. During March 2008, the 2nd respondent approached the petitioner and asked for return of his money Rs.55 lakhs, the petitioner promised to repay the amount within short time, but he did not do so.

3.Further, the petitioner made request for money of Rs.45 lakhs and promised that both earlier borrowings and the money received now would be repaid within six months. Believing the words, the 2nd respondent paid another Rs.45 lakhs during February and April 2008. Thereafter, when the 2nd respondent approached the petitioner for return of money, the petitioner evaded the payment and the 2nd respondent regularly visited the office and residence of the petitioner, but whenever he approached, the petitioner was giving one reason or other, dragging and evading repayment of debts.

4.The petitioner informed that one of his properties would be sold and repayment would be made. During October 2014, when the 2nd respondent approached the petitioner in his office along with his friend V.Radha Narasimha Rao and sought return of Rs.1.75 crores the amount due from the petitioner, he refused to return the money and threatened the 2nd respondent with his body guards. Hence, the 2nd respondent gave a complaint to the 1st respondent, against which, the present quash petition.

5.The learned counsel for the petitioner submitted that the 2nd respondent gave a complaint on 21.02.2015 for the alleged transaction taken place during October 2007. The learned counsel further submitted that for the payment made by the 2nd respondent, the petitioner handed over partly filled blank Demand Promissory Notes, during the period of 2007-2008. The petitioner repaid sums of money, which was not duly credited. The learned counsel submitted that the petitioner instead of invoking civil jurisdiction for recovery of alleged sum, on the other hand with the help of one Mohan, who is working as Section Officer in Prevention and Detection Section, Home Department, Secretariat, Chennai, the 2nd respondent threatened the petitioner on 10.01.2015 along with the said V.Radha Narasimha Rao, who is the friend of the 2nd respondent. On the same day, a letter was sent by the petitioner to the 2nd respondent about the incident. Similar complaint was sent to the Chief Minister's Cell; Director General of Police; the Commissioner of Police; Deputy Commissioner of Police, South Zone, T.Nagar; Assistant Commissioner of Police, T.Nagar, Greater Chennai; Inspector of Police, R1 Mambalam Police Station and Inspector of Police, R4 Pandy Bazaar Police Station, Chennai. On 28.01.2015, the petitioner filed Caveat Petition before this Court and the City Civil Court against the 2nd respondent. Suppressing these factual aspects, the 2nd respondent in collusion with the said Mohan, influenced the 1st respondent to register an FIR against the petitioner on

21.02.2015.

6.The learned counsel for the petitioner further submitted that the petitioner filed Anticipatory Bail in Crl.O.P.No.4821 of 2015 on 24.02.2015 before this Court. When the case was listed on 26.02.2015, the 2nd respondent through his counsel was keeping a watch over the same and the 1st respondent sought time to get instructions. In the meanwhile, the 1st respondent intensified search and finally, arrested the petitioner on 27.02.2015 at the early hours. On the same day, the petition for Anticipatory Bail in Crl.O.P.No.4821 of 2015 was listed and when it was taken up for hearing at about 01.00 p.m., the 1st respondent informed the Court that since the petitioner was arrested, the Anticipatory Bail petition becomes infructuous. On 27.02.2015 at the late evening hours, the petitioner was produced before the learned XI Metropolitan Magistrate, Saidapet, Chennai and remanded to judicial custody. The petitioner moved a bail petition in Crl.M.P.No.775 of 2015 before the learned Principal Sessions Judge, City Civil Court, Chennai and the same was dismissed on 07.03.2015. Subsequently, the petitioner preferred bail petition before the learned Principal Sessions Judge, City Civil Court, Chennai in Crl.M.P.No.3972 of 2015. The learned Sessions Judge, by order dated

12.03.2015 granted bail to the petitioner and he was in confinement till 13.03.2015.

7.The learned counsel for the petitioner further submitted that a plain reading of FIR would go to show that the complaint has been given for the purpose of recovery of money. The 2nd respondent did not produce any proof in support of his claim and how the alleged loan amount of Rs.75 lakhs had culminated into Rs.1.75 crores. Mere calculation would show that the interest claimed by the 2nd respondent is an exorbitant interest, which is prohibited under law. The 1st respondent without verifying and ascertaining any facts and without collecting any materials, acted as a recovery agent for the 2nd respondent. The admitted case of the 2nd respondent is that he advanced loan during 2007-2008, but no reason given for delay in lodging the complaint in the year 2015. Sensing the period of limitation is elapsed, with the false allegations, the 2nd respondent lodged a criminal complaint as though the petitioner had misappropriated and cheated him. The admitted case of the 2nd respondent is that the money was advanced based on the eight Demand Promissory Notes executed during October 2007 to March 2008. The 2nd respondent instead of filing a recovery suit, based on the bill of exchange, had given a false complaint against the petitioner and used the 1st respondent Police as recovery/collection agent.

8.It is further submitted that the petitioner was taken into police custody on 04.03.2015 till 06.03.2015. During the confinement, the petitioner was coerced to somehow settle the dues to the 2nd respondent, which is a time barred debt. In this case, admittedly, there is no entrustment, which is the *sine quo non* to attract the offence of misappropriation. Likewise, the offence of cheating would not arise in business transactions as there is no deception at the stage of inception. Further, the loan amount, admittedly, was given during the period from October 2007 to March 2008 and the 2nd respondent received back the loan amount and failed to return the Demand Promissory Notes. The 2nd respondent on his own made endorsement to show that there was some payments made upto 31.03.2008 and 31.03.2009 and the endorsement is said to have been made by the petitioner on 24.03.2012 for the purpose of giving life to a time barred debt, the petitioner not made any such endorsement. Hence, it is clear forgery. In this case, taking on the whole for the alleged threat, it is only an empty threat without any follow up action. Hence, no offence of criminal intimidation would be attracted. Apart from the petitioner, none other is shown as accused and in the complaint, there is no mention about the petitioner conspired with any other perosn. Hence, the offence of conspiracy would also not arise.

9.The admitted case of the 2nd respondent is that he extended a loan of Rs.90 lakhs and the same was not repaid. The mother-in-law of the 2nd respondent Ms.D.B.Bullamma filed a Civil Suit in C.S.No.385 of 2015 during 2015 before this Court, in which, she admitted that the petitioner received Rs.25 lakhs on 01.04.2007, for which, he executed 8 Demand Promissory Notes and he paid interest upto 31.03.2009 and he has not made any payment till 24.03.2012, but on 24.03.2012, the petitioner paid some interest amount, totally paid Rs.1.25 lakhs. This assertion is made in the pleadings filed in the Civil Suit, to overcome the limitation. Subsequent payments and alleged endorsement are shown. It is admitted by the 2nd respondent's mother-in-law that the 2nd respondent preferred a complaint and the same was registered in Crime No.70 of 2015 against the petitioner. The eight Demand Promissory Notes dated 01.04.2007 are produced in the Civil Suit in C.S.No.385 of 2015 and the copy of FIR in Crime No.70 of 2015. Likewise, the 2nd respondent's son V.Anand Kumar @ V.G.Anand Kumar filed a suit in O.S.No.538 of 2016 during March 2015, based on one Demand Promissory Note dated 09.04.2008 for Rs.5 lakhs before the XVII Additional City Civil Court, Madras. The 2nd respondent's wife Ms.V.Maruthi Sivaram filed a civil suit with deficits stamp before the City Civil Court, Madras in O.S.SR.No.14748 of 2015, which was kept pending for a long time, finally on 29.06.2016, it was closed. The 2nd respondent filed a suit in O.S.No.1203 of 2016 before the IV Assistant Judge, City Civil Court, Madras based on the Demand Promissory Note dated 01.04.2009 for Rs.10 lakhs. The suit in O.S.No.1203 of 2016 came to be dismissed on 12.12.2017 after ful-fledged trial. In the suit, the respondent as well as his friend Radha Narashima Rao were examined as PW1 and PW2. Against the dismissal of the suit in O.S.No.1206 of 2016, the petitioner preferred Appeal Suit in A.S.No.245 of 2019. The learned XVIII Additional Judge, City Civil Court, Chennai by judgment dated 18.02.2020, dismissed the Appeal, confirming the judgment and decree passed in O.S.No.1203 of 2016. It is pertinent to note that the civil proceedings filed by the 2nd respondent, his wife, his son and his mother-in-law during March 2015, i.e., after registration of FIR in Crime No.70 of 2015. In all the civil proceedings, each of the plaintiffs, claim that they individually given loan of Rs.50 lakhs [The mother-in-law of the 2nd respondent gave Rs.25 lakhs, the son of the 2nd respondent

V.Anand Kumar @ V.G.Anand Kumar gave Rs.5 lakhs, the wife of the 2nd respondent gave Rs.10 lakhs and another Rs.10 lakhs by the 2nd respondent]. All of them admitted that they independently gave loan to the petitioner based on the Demand Promissory Notes. On the contrary, in the complaint dated 21.02.2015 lodged before the 1st respondent, which culminated into FIR in Crime No.70 of 2015, the 2nd respondent claimed that he made payment of Rs.55 lakhs and Rs.45 lakhs. totally, Rs.1 crore. Nowhere in the complaint, it is stated that the plaintiffs in the suit made payments individually to the petitioner. Hence, the admitted case of the 2nd respondent and his family members in the civil suit and the complaint are contrary to each other. In all the civil proceedings, the plaintiffs relied on the FIR in Crime No.70 of 2015 and annexed copy as plaintiff document. Thus, the 2nd respondent to get over the limitation, made a criminal complaint claiming that the petitioner paid some interest and made endorsement in the demand draft on 24.03.2012 to give life to the Demand Promissory Notes, which became time barred.

10.The Hon'ble Apex Court and this Court, time and again held that the police cannot be used as a collection/recovery agent to recover money. The admitted case of the 2nd respondent that he gave loan amount to the petitioner for interest, for which Demand Promissory Notes were obtained. Thus, a civil proceedings has been given in a criminal colour and the 2nd respondent with his contacts and connections, used the 1st respondent as a collection agent.

11.The learned counsel for the petitioner filed additional typed set, in which, it is seen the cases pending against the petitioner, the plaint copy in C.S.No.385 of 2015 filed by the mother-in-law of the 2nd respondent is being stoutly defended by the petitioner. The learned counsel for the petitioner has filed his written arguments and particulars of the cases pending against the petitioner and plaint copy in O.S.No.538 of 2016 filed by the 2nd respondent's son is defended and the same is pending before the learned XVII Additional Juge, City Civil Court, Chennai. The suit in O.S.SR.No.14748 of 2018 filed by the 2nd respondent's wife was dismissed for default. The suit filed by the 2nd respondent in O.S.No.1203 of 2016 got dismissed after ful-fledged trial, against which, the 2nd respondent filed Appeal Suit in A.S.No.245 of 2019, which was also dismissed. Thus, the petitioner has been defending the civil proceedings diligently in the respective Courts.

12.Thus, filing of civil proceedings by the the 2nd respondent and his family members against the petitioner would go to show that it is a predominantly a civil dispute between the them and a civil dispute is given criminal colour. All the civil proceedings are based on the Demand Promissory Notes, which are all being adjudicated before the Civil Courts. Now, the criminal case is also based on the same Demand Promissory Notes. The petitioner, earlier to the above complaint of the 2nd respondent, on 10.01.2015 sent a notice to the 2nd respondent as well as to the police officials for acting in a high manner using men and muscle power, attempting to recover the money by force. As a counter blast to the notice, the above complaint came to be lodged. Further, the 2nd respondent documents filed in the typed set are not complete documents, depicting true state of affairs.

13.The petitioner to cast aspersions filed a press note issued by the Additional Director General of Police, CID, Andhra Pradesh, Hyderabad on 24.06.2011. Majority of cases referred therein were either closed or the petitioner got acquitted, except in one case. In the list of cases furnished by the 2nd respondent, the petitioner was acquitted by respective the Courts, except for one case in S.No.2 in C.C.No.538 of 2011 which is pending before the learned VI Additional CMM, Nampally. The Civil Suit in C.S.No.27 of 2015 and C.S.No.450 of 2015 are pending before this Court. Thus, the 2nd respondent to mislead this Court had not given full and correct particulars. Earlier, the petitioner was granted permission and he was permitted to go abroad by the appropriate Court. Further, the petitioner filed W.P.No.10108 of 2016 to taken action against one T.Mohan, in which this Court by order dated 02.01.2019 dismissed the petition. The outcome of W.P.No.10108 of 2016 are no way connected to this case. The cases referred by the 2nd respondent are all of the year 2009 to 2011, only to cause prejudice, these cases have been referred. The petitioner to his credit has got 43 cases pending against him, of these 43 cases, only one criminal case is pending trial in C.C.No.538 of 2011, on the file of the VI Additional Chief Metropolitan Magistrate Court, Nampally and two civil cases in C.S.Nos.27 & 450 of 2015 on the file of this Court, in all the other cases, the petitioner was acquitted.

14.Thus, in support of his complaint dated 21.02.2015, the 2nd respondent failed to produce any documents to the 1st respondent Police. In view of the above facts, the FIR against the petitioner is proved to be initiated manifestly attended with ulterior motive and prayed for quashing.

15.In support of his contention, the learned counsel for the petitioner relied on the following citations:-

- The learned counsel for the petitioner placed reliance on the judgment of the Hon'ble Apex Court in the case of "***Inder Mohan Goswami and another Versus State of Uttaranchal and others reported in (2007) 12 SCC 1***", to emphasis the scope and ambit of the Court's power under Section 482 Cr.P.C.
- He placed reliance on the case of "***Paramjeet Batra Versus State of Uttarakhand and others reported in (2013) 11 SCC 673***" for the point that the civil transactions may also have a criminal texture, but it is to be seen whether a dispute which is essentially of a civil nature is given a cloak of criminal offence.
- He placed reliance on the case of "***Rajeshbhai Muljibhai Patel and others etc., Versus State of Gujarat and another etc., in Criminal Appeal Nos.251-252 of 2020 (Arising out of SLP(Crl.)Nos.142-143 of 2019)***" for the preposition that when the issue is pending consideration in civil suit, the FIR ought not to be allowed to continue as it would be prejudice the interest of the parties and the stand taken by them in the

civil suit.

- In the case of "***Sushil Sethi and another Versus The State of Arunachal Pradesh and others in Criminal Appeal No.125 of 2020 (Arising from SLP(Crl.)No.590 of 2019)***" following the case in "***Inder Mohan Goswami Versus State of Uttaranchal reported in (2007) 12 SCC 1***" held that the criminal prosecution is not to be used as a instrumental or harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused.
- He placed reliance on the case of ***"Satishchandra Ratanlal Shah Versus State of Gujarat and another in Criminal Appeal No.9 of 2019 (Arising out of SLP(CRL.)No.5223 of 2018"*** that summary civil suit seeking recovery of loan amount is still pending and the mere inability of the accused to return the loan amount cannot give rise to criminal prosecution for cheating and misappropriation.

16.The learned counsel for the 2nd respondent filed typed set and made submissions that the petitioner is a fraudster, claiming to be a cinema producer and financier, had borrowed loan from several persons and cheated them, the 2nd respondent is one of the victim. The learned counsel further submitted that the petitioner using men and muscle power, had not only failed to repay the amount, but also threatened to do away with the 2nd respondent. The petitioner was having close relationship with the antisocial elements. The Hyderabad Police had registered several cases against him, apart from the police, several individuals, who gave loan also lodged criminal complaints, including cases under Section 138 of the Negotiable Instruments Act, 1881. Thus, the petitioner is a habitual offender, having several cases against him. The petitioner, initially, started his carrier as a film financier, later turned into a producer and started film production company in the name of 'Kanakarathna Movies'. The petitioner, by cheating several persons, acquired several properties at T.Nagar and other places in Chennai and near Mahabalipuram and in the State of Andhra Pradesh.

17.The learned counsel for the 2nd respondent submitted that petitioner was convicted in C.C.No.135 of 2011 by the learned Special Judicial Magistrate of I Class for Prohibition and Excise, Kurnool for one year and to pay a fine of Rs.10,000/- for offence under Section 138 of the Negotiable Instruments Act, 1881. The charge sheet in C.C.No.538 of 2011 is pending against the petitioner before the learned VI Additional Chief Metropolitan

Magistrate, Nampally, for offence under Sections 420, 406 and 506 r/w 34 IPC. The petitioner to his credit has got 43 cases pending against him.

18.It is further submitted that on registration of FIR, the petitioner had approached this Court and got interim stay. Due to which, the investigation could not be continued and prayed for dismissal of the quash petition.

19.The learned Additional Public Prosecutor appearing for the 1st respondent submitted that the 2nd respondent lodged a complaint on 21.02.2015 and a case in Crime No.70 of 2015 was registered for offence under Sections 406, 420, 506(i) and 120(b) IPC. Thereafter, the petitioner was arrested on 27.02.2015 and taken police custody on 04.03.2015 to 06.03.2015. The learned Principal Sessions Judge, City Civil Court, Chennai granted bail to the petitioner in Crl.M.P.No.3972 of 2015 on 12.03.2015 and imposed condition that the petitioner to produce documents relating to his property situated in Hyderabad before the learned XI Metropolitan Magistrate, Chennai within 10 days. Further, the case was referred to Mediation, since the issue involved is money transaction. During investigation, the petitioner approached this Court during April 2015 and obtained interim stay, thus the investigation, in this case, could not be continued. Only during investigation, the truthfulness and otherwise of the complaint as well, the claim of the petitioner could be verified. The Hon'ble Apex Court as well as this Court had deprecated the quashing of the FIR at the initial stage. Hence, he prayed to dismiss the petition.

20.This Court considered the rival submissions and perused the materials available on records.

21.It is admitted that the 2nd respondent gave money as loan to the petitioner in the year during March 2008 and April 2008. It is also admitted that for these loans, Demand Promissory Notes were obtained by the 2nd respondent and till the complaint was lodged on 21.02.2015, no steps were taken to recover the loan amount from the petitioner. During October 2014, the 2nd respondent approached the petitioner for repayment, earlier on occasions, he claims he made request which is without any materilas. The other contention of the 2nd respondent that the petitioner paid some interest and made endorsement in the Demand Promissory Notes, lastly on 24.03.2012, he made an endorsement is disputed and this endorsement has been shown to be made only for the purpose of giving life to a time barred debt to the bill of exchange.

22.It is admitted that the 2nd respondent and his family members filed civil proceedings before this Court as well as in City Civil Courts, Chennai against the petitioner, in which Demand Promissory Notes and FIR in Crime No.70 of 2015 are filed along with the plaint as documents. In the complaint, it is admitted that the transaction between the petitioner and the 2nd respondent is a commercial loan transaction. The civil proceedings are filed based on the Demand Promissory Notes and in the criminal complaint, the same Demand Promissory Notes are the basis. The admissions made by the 2nd respondent in the complaint are quite opposite to the admissions made in the plaint, filed in the civil proceedings.

23.The Hon'ble Apex Court and this Court had time and again held that the Police should not act and should not be used as collection/recovery agent for commercial transaction between the parties. It is admitted that civil proceedings are pending between the petitioner and the 2nd respondent and his family members for the same transaction. The entire case of the 2nd respondent is that the petitioner while receiving loan, executed Demand Promissory Notes and thereafter, failed to make the payments. The dispute between the parties is consequently a civil wrong.

24.A mere breach of a promise, agreement or contract does not, *ipso facto,* constitute a criminal breach of trust, without there being a clear case of entrustment. Further, the transaction had taken place in the year 2008 and the complaint was lodged in the year 2015. For constituting an offence of cheating, the complainant is required to show that the petitioner had fraudulent or dishonest intention at the time of making promise or representation. In this case, no such promise or representation was made by the petitioner. The transaction between the petitioner and the 2nd respondent is a contract, mere failure of agreement and contract would not lead to offence of cheating and misappropriation. The 2nd respondent to recover the amount and its dues, instituted civil proceedings, seeking recovery of loan amount, which is still pending for adjudication. It is observed in this case that it is difficult to establish conspiracy by direct evidence or to infer in the absence of any such averments.

25.On the above facts, this Court finds that the dispute between the parties constitute only a civil wrong and not a criminal wrong. The Hon'ble Apex Court in the case of ***Inder Mohan Goswami Versus State of Uttaranchal reported in (2007) 12 SCC 1***, elaborately dealt on this aspect, questioned dual the proceedings and observed that the criminal prosecution are not to be used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused when dispute between the parties constitute only a civil wrong and not a criminal wrong and also observed that allowing the proceedings to continue would be an abuse of process of Court or that the ends of justice require that the proceedings ought to be quashed. This view is consistently followed by this Court as well as the Hon'ble Apex Court in quashing the criminal proceedings of such nature. Recently the Apex Court in the case of ***Satishchandra Ratanlal Shah Versus State of Gujarat and another in C.A.No.9 of 2019***, referring to the case of ***Gian Sign Versus State of Punjab*** reported in ***(2012) 10 SCC 303*** held that mere inability to return the loan amount cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. In this case the second respondent by himself and through his family members had instituted Civil proceedings seeking recovery of the loan amount, no such averments made in the Civil proceedings and the pending of Civil proceedings are not in dispute.

26.On the facts narrated above, it is clear that a civil dispute has been given in a criminal colour. At the most, it can only be said that the inability of the petitioner to return the loan amount cannot give rise to criminal prosecution. The respondent by himself and his family members, instituted a civil proceedings for seeking recovery of loan amount.

27.In the result, the impugned FIR in Crime No.70 of 2015 pending on the file of the 1st respondent Police is, hereby, quashed. The petition is, accordingly, allowed. Consequently, the connected Criminal Miscellaneous Petition is closed.

16.10.2020

Speaking order/Non-speaking order
Index: Yes/No
Internet: Yes/No

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To

1.The Inspector of Police,
CCB, EDF-I, Team-II,
Vepery, Chennai-600 007.

2.The Public Prosecutor,
High Court, Madras.

M.NIRMAL KUMAR, J.

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PRE-DELIVERY ORDER IN
Crl.O.P.No.10215 of 2015

16.10.2020