IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.555 of 2020
and Crl.M.P.Nos.325 & 327 of 2020

1. M.Jaya

2. Senthil Kumar ... Petitioners/Accused 1 & 2

Vs.

1. M/s. Balaji Finance Ltd.,
Rep. by its authorised signatory
No.804, 805, 806, 8th Floor,
Delta Wing, Raheja Towers,
177, Anna Salai,
Chennai - 600 002. ...Respondent/Complainant

2. Bharathi J.Shah ... 2nd Respondent/2nd Accused

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the proceedings pursuant to C.C.No.5946 of 2018, before the XIII Metropolitan Magistrate, Egmore, and to quash the proceedings against the petitioners herein.

For Petitioners: Mr.Abdl Rahman
For Nathan and Associates

For Respondents: No appearance.

ORDER

This petition has been filed to quash the proceeding in C.C.No. 5946 of 2018, on the file of the XIII Metropolitan Magistrate, Egmore, thereby taken cognizance for the offences punishable under Sections 419, 420, 406, 465, 467, 468, 120B and 34 of IPC, as against the petitioners.

2. The learned counsel appearing for the petitioners would submit that the petitioners are arrayed as A1 and A2 in the complaint lodged by the first respondent herein. The second respondent is arrayed as A3. The learned Magistrate had taken cognizance mechanically for the offences under Sections 419, 420, 406, 465, 467, 468, 120B and 34 of IPC, as against the petitioners without any specific overtact to attract those offences. As per the complaint lodged by the first respondent, the third accused borrowed a sum of Rs.3,55,00,000/- from the

first respondent on 16.05.2014, for which the immovable property of the petitioners herein mortgaged by the husband of the third accused. In this regard, the first petitioner was taken to the Sub Registrar Office, Velachery, by the husband of the third accused for registering the mortgage deed in favour of the first respondent herein. The first petitioner is being illiterate and she did not even know to sign her name and without understanding English, instead of mortgage deed, the husband of the third respondent executed the sale deed.

2.1. He further submitted that the petitioners came to understand the said fact only after six months from the date of execution of the sale deed and the husband of the third accused absconded from town, thereby cheated the petitioners using their illiteracy. The said sale deed was registered as Document No.3734 of 2014 and in the sale deed it was mentioned that the sale consideration of Rs.13,37,761/- has been given at the time of registration and a sum of Rs.3,41,62,239/- has been given by way of cheque bearing No.010452 issued by the first respondent herein. Thereafter the said cheque was presented for collection in the fake account stands in the name of the first petitioner and swindled the money by themselves. The same has been confirmed when the petitioners got hold the bank statement of the fake account created by the third accused that the amount of Rs.3,41,62,239/- had been deposited in that account and same has been withdrawn towards Nandi Cycle Company owned by the third accused. Therefore, no sale consideration was paid for the sale deed executed by the first petitioner and the said deed itself is absolutely a fraud played upon the petitioners and it become nullity.

2.2. Thereafter the petitioners lodged complaint before the concerned police officials, but they failed to register the same citing that it is a civil case. Hence the petitioners filed a civil suit in O.S.No.3539 of 2015 on the file of the XVIII City Civil Court, Chennai and the same was rejected for the reason that non payment of deficit Court fee. While being so, the first respondent lodged the present complaint alleging that the petitioners and the third accused have cheated the said amount. Therefore, the entire proceedings is liable to be quashed and sought for quashment of the entire proceedings. In order to support of his contention, the learned counsel appearing for the petitioners relied upon the following reported judgments:-

i) 1990 AIR 1173 - Dularia Devi Vs. Janadan Singh and ors
ii) 1968 AIR 956 - Ningawwa Vs. Byrappa
iii) 2001 AIR SCW 4142 - M.Krishnan V. Vijay Singh

3. It is avert in the complaint that all the accused persons have colluded and conspired together cheated the first respondent. The third accused approached the first respondent for availing loan to the tune of Rs.3,55,00,000/- to purchase the property situated at Old No.11, New No.28, Raja Street, Gandhi Road, Velachery, Chennai - 600 042 by mortgaging the

title deed of the said property. Thereafter, the third accused committed defaults in paying the installments. The third accused also had declared herself as an insolvent before this Court in I.P.No.12 of 2015. The first petitioner being the original owner of the property executed the sale deed in favour of the third accused and the same has been registered in Document No.3734 of 2014. Thereafter, the third accused executed mortgage deed in favour of the first respondent by deposited the said title deed, which was registered in Document No. 3735 of 2014 dated 05.06.2014.

3.1. Thereafter, the first petitioner filed suit in O.S.No.3539 of 2015 on the file of the XVIII Assistant City Civil Court, Chennai, for declaration to declare that the sale deed executed by her in favour of the third accused and the mortgage deed executed by the third accused in favour of the first accused are null and void. The first petitioner having been executed the sale deed after receipt of the entire sale consideration, which was paid by the first respondent to the tune of Rs.3,41,62,239/- by way of cheque, and thereafter she herself colluded with the third accused and filed the said suit for declaration. The second petitioner being the son of the first petitioner, he also witnessed the deposit of title deed and also the sale deed executed by the first petitioner and thereby he had full knowledge about the execution of the sale deed and also mortgage deed. Therefore all the accused persons have conspired together and only intended to cheat the first respondent to the tune of Rs.3,55,00,000/-, they filed the suit for declaration. Therefore, the respondents lodged complaint as against the petitioners.

4. Heard Mr.Abdul Rahman, learned counsel appearing for the petitioners. Though notice served, none appeared on behalf of the respondents.

5. There are totally three accused in which, the petitioners are arrayed as A1 & A2 and the second respondent is arrayed as the third accused. The first respondent lodged complaint before the Central Crime Branch, Vepery, as against the accused persons and the same was closed by the Inspector of Police, Central Crime Branch, EDF, Team 1, Vepery. Thereafter, the first respondent filed a private complaint and the same has been taken cognizance in C.C.No.5946 of 2018 for the offences punishable under Sections 419, 420, 406, 465, 467, 468, 120B and 34 of IPC, as against three accused persons.

6. The crux of the allegations are that the third accused approached the first respondent for availing loan of Rs.3,55,00,000/- to purchase the property from the first accused by depositing the title deed. Accordingly, the first respondent provided loan to the third accused and the same has to be repaid in 325 monthly installments commencing from 05.07.2014. to 05.07.2041. The third accused had paid six

installments and thereafter she defaulted in paying installments. Thereafter, the third accused had also declared herself as an insolvent by filing insolvency petition in I.P.No.12 of 2015 before this Court. The first accused also filed suit in O.S.No. 3539 of 2015 for declaration declaring that the sale deed executed in favour of the third accused and also the mortgage deed executed by the third accused in favour of the first respondent are null and void, thereby all the accused persons cheated the first respondent to the tune of Rs.3,55,00,000/- and committed the above said offences.

7. It is seen that the petitioners are mother and son. The first petitioner is the original owner of the property situated at New No.28, Raja Street, Gandhi Road, Velacherry, Chennai. The third accused availed loan to the tune of Rs.3,55,00,000/- from the first respondent to purchase the said property from the first petitioner herein. According to the petitioners, the first petitioner had absolutely need not to sell the property to the third accused herein. The husband of the third accused is being friend of the petitioners and requested the first petitioner and if the property mortgaged, they will get loan to invest in they cycle business and get huge profit in the business. Believing the said words, the first petitioner came to the Registrar Office to execute mortgage deed in favour of the first respondent herein. Instead of executing mortgage deed, the third accused fraudulently created sale deed in her favour and thereafter it was deposited by mortgage and also availed loan to the tune of Rs.3,55,00,000/-.

8. It is also seen that immediately after knowing the fact, the first petitioner lodged complaint before the police on 12.03.2015, but unfortunately, it was not registered by the police officials. Therefore, the first petitioner was constrained to file a suit in O.S.No.3539 of 2015 for declaration on the file of the XIII City Civil Court, Chennai, declaring that the sale deed executed in favour of the third accused and also the mortgage deed executed by the third accused in favour of the first respondent are null and void. However, the said suit was rejected for non payment of deficit Court fee. The petitioners are being poor and they could not able to pay the necessary Court fee and the same was rejected. Though the first petitioner filed suit, she is no way connected with the loan transaction between the third accused and the first respondent herein.

9. On careful reading of the complaint, no offence is made out as against the petitioners. The first petitioner is being the original owner of the property, she executed sale deed in favour of the third accused. Insofar as the second petitioner is concerned, he is being the son of the first petitioner, he stood as witness in the sale deed executed in favour of the third accused and also witnessed to the deposit of title deed document registered in favour of the first respondent. Even according to the first respondent, the third

accused is the borrower of Rs.3,55,00,000/- and the original sale deed stands in the name of the third accused has been deposited by mortgage deed executed by her in favour of the first respondent. Though the third accused was declared as insolvent by this Court, the first respondent can very well proceed as against the title deed deposited in favour the first respondent. In fact the first respondent also proceeded to auction the property, which was mortgaged in favour of the first respondent, but no one is interested to purchase the property. Mere filing of the suit by the first petitioner, it does not means that she colluded with third accused and cheated the first respondent. In fact, the said suit was also rejected for non payment of deficit Court fee. Therefore, the entire proceeding is nothing but clear abuse of process of Court as against the petitioners as such the petitioners need not to go for ordeal of trial before the trial Court.

10. In view of the above discussion, this Criminal Original Petition stands allowed and the proceedings in C.C.No.5946 of 2018, before the XIII Metropolitan Magistrate, Egmore, is hereby quashed as far as the petitioners are concerned. The trial Court is directed to proceed as against the third accused and complete the trial within a period of one year from the date of the receipt of a copy of this Order. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

rts

To

1. The XIII Metropolitan Magistrate,
Egmore, Chennai.

+1cc to M/s.Nathan and Associates, Advocate SR.No.27914

CRL.O.P.No.555 of 2020 and
Crl.M.P.Nos.325 & 327 of 2020

MG(CO)
GMY(19/10/2020)