

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.12.2020

PRONOUNCED ON : 22.12.2020

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

CRL.O.P.NO.18185 OF 2019

AND

CRL.M.P.NOS.9222 AND 12047 OF 2019

1. Santhosam
2. Stella Santhosam .. Petitioners

Versus

1. State rep. By
The Inspector of Police,
Central Crime Branch,
Chennai.
2. Senthil Kumar
Chief Manager,
M/s.Reliance Home Finance Company Ltd.,
No.5, Reliance House, Haddows Road,
Nungambakkam, Chennai - 600 020. ... Respondents

Prayer:

Petition filed under Section 482 Cr.P.C., to call for the records in Cr.No.85 of 2019 on the file of the respondent police and quash the same as against the petitioners.

For Petitioners : Mr.R.Vivekananthan

For Respondents : Mr.S.Karthikeyan (for R1)
Additional Public Prosecutor.
Mr.K.Jayasudha (for R2)

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O R D E R

This Criminal Original Petition has been filed to call for the records in Cr.No.85 of 2019, on the file of the respondent police and to quash the same, as against the petitioners.

2. Heard Mr.R.Vivekananthan, learned counsel appearing for the petitioners, Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the 1st respondent police and

Mrs.K.Jayasudha, learned counsel appearing for the 2nd respondent Finance Company and perused the materials available on record.

3. The case of the prosecution is that the petitioners, who are arrayed as 1st and 2nd accused, in Cr.No.85 of 2019, are the Proprietors of M/s. Nissi Ladies Hostel, running at Old No.78/104, New No.104, Lattice Bridge Road, Adyar, Chennai. In the Month of February 2017, the petitioners/1st and 2nd accused approached the 2nd respondent Finance Company and submitted a Housing Loan Application in respect to purchase of a property situated at Old No.78/104, New No.104, Lattice Bridge Road, Adyar, comprised in S.No.1078/93, Town Survey No.7/1, Block No.18, Pallipatti Village, Mylapore-Triplicane Taluk. The said loan application has been submitted for a loan amount of Rs.9,30,00,000/-.

4. After considering the financial capacities of the petitioners, the office bearers of the 2nd respondent company sanctioned the loan amount. In the mean time, the office bearers of the 2nd respondent company inspected the property and had reliably learnt that the ground floor of the property was occupied by one Mr.S.K.A.Abdul Khader and his family members, who are alleged to have been carrying their family business, under the name and style of M/s.Rassi Glass and Timber. Apart from the ground floor, rest of the portion, is occupied by the petitioners and they were running the Hostel i.e., M/s.Nissi Ladies Hostel.

5. Further, during the time of property inspection, the officers of the 2nd respondent company reliably learnt that the owner of the said premises is Mrs.G.Vijayalakshmi and others. After inspection, the loan amount of Rs.9,30,00,000/- was sanctioned to the petitioners/1st and 2nd accused, repayable within a period of 127 months. Thereby on 30.03.2017, the petitioners/1st and 2nd accused entered into a sale agreement in respect of the abovesaid property owned by Mrs.G.Vijayalakshmi and others.

6. In turn, by virtue of the sale agreement, on 12.04.2017, the said property has been purchased by the petitioners for a sale consideration of Rs.9,30,00,000/- and the sale was registered at Sub Registrar's office, Adyar. Consequentially, the petitioners executed a mortgage deed and Memorandum of deposit of title deeds, in favour of the 2nd respondent Finance Company.

7. In the said situation, on 12.12.2018, the 2nd respondent company have been served with an impleading notice issued by one Mrs.N.H.Rahima, D/o.Mr.S.K.A.Abdul Kader. In turn, on verification, the 2nd respondent company came to know that a suit

is pending between the family members of Mr.S.K.A.Abdul Kader, who are the tenants in the petition mentioned property.

8. Thereafter only in the said circumstances, the 2nd respondent Finance Company lodged a complaint, based on which, a case has been registered against the petitioners in Crime No.85 of 2019, for offence under Sections 406 and 420 r/w 34 of IPC.

9. The learned counsel appearing for the petitioners would contend that in respect to the loan transaction, had between the petitioners and the 2nd respondent, already the 2nd respondent initiated a SARFAESI proceedings and as of now, the symbolic possession is with the 2nd respondent Finance Company.

10. More than that, after availing the loan, till June 2018, the petitioners repaid the instalments without any default. Only due to the inability, now the petitioners have not paid the instalments and therefore, the same is not an offence. According to the learned counsel for the petitioners, for the offence under Sections 420 and 406 of IPC, the necessary ingredients are not available in the complaint given before the 1st respondent police.

11. On the other hand, the learned counsel appearing for the 2nd respondent Finance Company would contend that after suppressing the injunction granted in favour of the tenants, the petitioners availed the loan and the same is sufficient to hold that the petitioners are having a dishonest intention to deceive the 2nd respondent company.

12. On considering the submissions made by the learned counsel appearing on either side, it is an admitted fact that after availing the loan in April 2017, till June 2018, the petitioners have paid the instalments without any default. Further, since the petitioners defaulted in payment of dues, the 2nd respondent initiated SARFAESI proceedings and as of now, the property is in the symbolic possession of the 2nd respondent.

13. In the said circumstances, it is necessary to see whether the allegation levelled by the 2nd respondent will constitute the ingredients for the offence under Sections 406 and 420 of IPC. In the decision in Sathishchandra Ratanlal Shah Vs. State of Gujarat and Another, reported in 2019 (9) SCC (Civil) 148, our Hon'ble Apex Court held as follows:

"11. Having observed the background principles applicable herein, we need to consider the individual charges against the appellant. Turning to Section 405 read with 406 of IPC, we observe that the dispute arises out of a loan transaction between the parties. It falls

from the record that the respondent no.2 knew the appellant and the attendant circumstances before lending the loan. Further it is an admitted fact that in order to recover the aforesaid amount, the respondent no. 2 had instituted a summary civil suit which is still pending adjudication. The law clearly recognizes a difference between simple payment/investment of money and entrustment of money or property. A mere breach of a promise, agreement or contract does not, ipso facto, constitute the offence of the criminal breach of trust contained in Section 405 IPC without there being a clear case of entrustment.

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13. Now coming to the charge under Section 415 punishable under Section 420 of IPC. In the context of contracts, the distinction between mere breach of contract and cheating would depend upon the fraudulent inducement and mens rea. (See Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168). In the case before us, admittedly the appellant was trapped in economic crisis and therefore, he had approached the respondent no. 2 to ameliorate the situation of crisis. Further, in order to recover the aforesaid amount, the respondent no. 2 had instituted a summary civil suit seeking recovery of the loan amount which is still pending adjudication. The mere inability of the appellant to return the loan amount cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, as it is this mens rea which is the crux of the offence. Even if all the facts in the complaint and material are taken on their face value, no such dishonest representation or inducement could be found or inferred."

14. Now following the ratio laid down in the above referred judgment, here it is a case, the amount now alleged to be cheated by the petitioners, was entrusted by the 2nd respondent as a loan amount. The records show that the 2nd respondent knew the attending circumstances before lending the loan. More than that the proceedings under SARFAESI Act, is pending for adjudication. It is only a breach of promise and not a breach of trust. Accordingly, the ingredients which are necessary for Section 406 of IPC, is not found in the allegation levelled by the 2nd respondent.

15. Secondly, in respect to the offence under Section 420 of IPC, it is a clear case, only due to the inability the petitioners have not paid the due amount and civil proceedings have been initiated. Our Hon'ble Apex Court has clearly observed that mere inability of the petitioners to return the loan amount cannot give rise to a criminal prosecution of cheating. Here it is a case the 2nd respondent did not indicate the fraudulent intention having by the petitioners. In the complaint itself, the 2nd respondent admits that during the time of visiting the property, the ground portion was leased out to a third party. And therefore, the filing of the suit by a third party cannot give rise to any suspicious circumstances, over the commitment having by the petitioners.

16. Further, in the judgment of Arun Bhandari Vs. State of Uttar Pradesh and Others, reported in 2013 (2) SCC 801, it was observed as follows:

"22. In the said case [S.W.Palnitkar V. State of Bihar, reported in (2002) 1 SCC 241], while dealing with the ingredients of criminal breach of trust and cheating, the Bench observed thus:

"9. The ingredients in order to constitute a criminal breach of trust are: (i) entrusting a person with property or with any dominion over property (ii) that person entrusted (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged, (ii) of any legal contract made, touching the discharge of such trust.

10. The ingredients of an offence of cheating are: (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii) (a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii) (b), the act of omission should be one which causes or is likely to cause damage or harm to the person

induced in body, mind, reputation or property."

17. Now applying the ratio laid down in the said judgment also with the case in our hand, the allegation levelled by the 2nd respondent do not show any fraudulent or dishonest inducement. Though there was a preposition that ordinarily High Court would not exercise its inherent jurisdiction to quash a criminal proceedings, here it is a case, after initiating the civil proceedings, the FIR has been registered against the petitioners. In respect of the collusion having by the petitioners with the tenants, no material was indicated on the side of the 2nd respondent. In fact in the complaint itself, the 2nd respondent admitted that during the time of visiting the property, the tenants are running their family business and only after knowing the same, sanctioned the loan. Therefore, for filing the suit by the tenant, the petitioners are no way responsible and accordingly, now registering the FIR against the petitioners, is an abuse of process of law.

18. In the said circumstances, in CBI Vs. Duncans Agro Industries Limited, reported in 1996 (5) SCC 591, our Hon'ble Apex Court has held as follows:

"26.....for the purpose of quashing the complaint, it is necessary to consider whether the allegations in the complaint prima facie make out an offence or not. It is not necessary to scrutinize the allegations for the purpose of deciding whether such allegations are likely to be upheld in the trial. Any action by way of quashing the complaint is a action to be taken at the threshold before evidences are led in support of the complaint. For quashing the complaint by way of action at the threshold. It is, therefore, necessary to consider whether on the face of the allegations [incorporated a complaint or FIR], a criminal offence is constituted or not"

19. Now, following the said principles with the case in our hand, herein also the allegation levelled against the petitioners, has not constituted any prima facie case. In fact, the issue related to a civil nature is brought by the 2nd respondent with a criminal colour. Therefore, it is a fit case for exercising the powers under Section 482 of Cr.P.C and thereby, the FIR registered against the petitioners is liable to be quashed.

20. In the result, the Criminal Original Petition is allowed and the FIR registered in Cr.No.85 of 2019 on the file of the respondent police, is quashed. Consequently, the connected Criminal Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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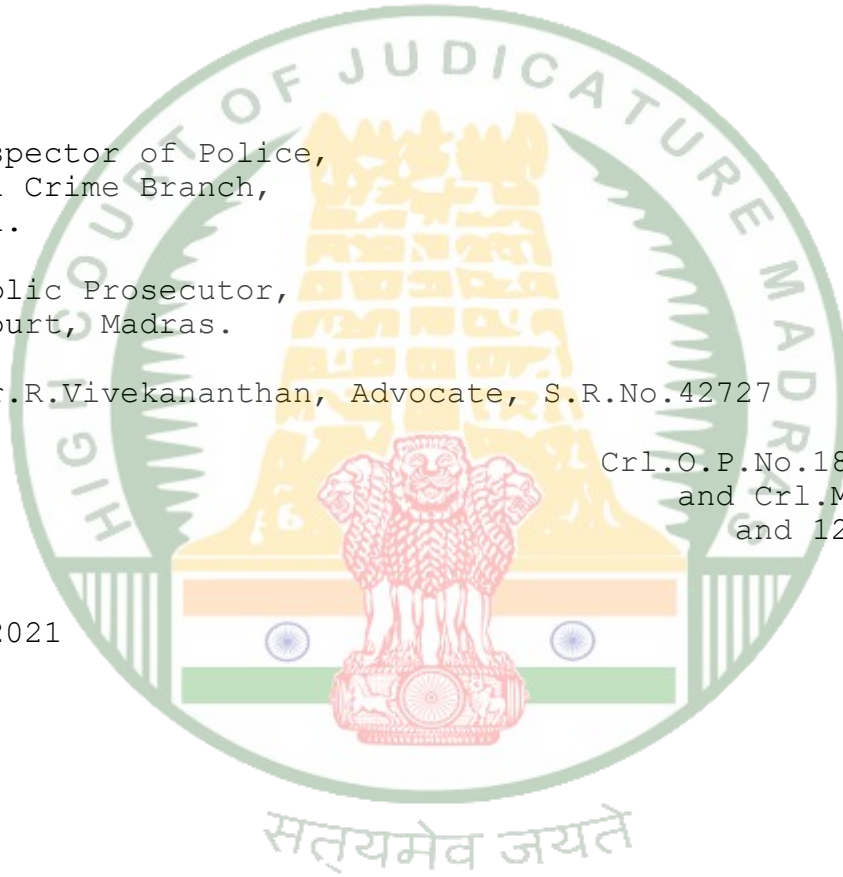
To

1. The Inspector of Police,
Central Crime Branch,
Chennai.
2. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.R.Vivekananthan, Advocate, S.R.No.42727

Crl.O.P.No.18185 of 2019
and Crl.M.P.Nos.9222
and 12047 of 2019

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CS/02/02/2021



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