

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.12.2020
Pronounced on : 11.12.2020

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.O.P.No.22841 of 2019
and
Crl.M.P.No.11941 of 2019

1. M.Kanakaraj
2. G.Ramakrishnan
3. L.Lakshmanaperumal
4. M.V.G.Srinivasan
5. S.Senthil Marison
6. Venugopal
7. Jagadeesan .. Petitioners

Versus

1. State rep. By
The Inspector of Police,
R.S.Puram Police Station,
Coimbatore City.
2. Bank of India,
R.S.Puram Branch,
Coimbatore, represented by
the Chief Manager/Authorised Officer,
Kannan. .. Respondents

Prayer: Petition filed under Section 482 Cr.P.C., to call for the records and quash the FIR in Crime No.522 of 2019 on the file of the 1st respondent police station in so far as the petitioners are concerned.

For Petitioners : Mr.A.M.Rahamath Ali

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

Mr.P.Saravana Sowmiyan (for R2)

O R D E R

This Criminal Original Petition has been filed seeking the relief to quash the FIR registered in Crime No.522 of 2019 on the file of the 1st respondent police, in so far as the petitioners are concerned.

2. Heard Mr.A.M.Rahamath Ali, learned counsel appearing for the petitioners as well as Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the 1st respondent police and Mr.P.Saravana Sowmiyan, learned counsel appearing for the 2nd respondent/complainant bank and perused the materials available on record.

3. The petitioners are arrayed as Accused Nos.5 to 11 in Cr.No.522 of 2019, on the file of the 1st respondent police. Upon the complaint given by the 2nd respondent bank, as usual by following the order passed by the jurisdictional Magistrate, under Section 156(3) of Cr.P.C, the said FIR stands registered against the petitioners.

4. The case of the petitioners before this Court is that in the complaint filed by the 2nd respondent bank, the Authorised Officer of the Bank of India, R.S.Puram Branch, Coimbatore, had averred that the Accused Nos.1 and 2 are the husband and wife and borrowers of the loan from the de facto complainant bank, for which Accused No.3, representing the Accused No.4-Firm [M/s.Spring Fields Shelters Private Limited], was the guarantor. For availing the loan of Rs.77,90,000/-, Accused Nos.1 to 4, produced valid Construction Agreement and Sale Agreement, entered into between them for the purpose of purchasing the Flat No.106 (Block No.10) 1st Floor, admeasuring 483 sq.ft of Undivided share of land and 720 sq.ft. of super Built up area. The loan availed by them was not repaid and thus, the loan account has become NPA. The implication of the petitioners in the alleged crime is malicious and without any material and there is also no scope for collection of any further materials against the petitioners. According to the petitioners, the FIR and the connected investigation as far as the petitioners are concerned, is not maintainable.

5. In support of the petition filed by the petitioners, the learned counsel appearing for the petitioners would contend that in the loan availed by the Accused Nos.1 and 2, the petitioners herein have not signed as a guarantor, whereas only the Accused Nos.3 and 4, have signed as guarantors. In fact the petitioners being the land owners, not entered into any agreement with bank and there is no privity of contract between the petitioners and the 2nd respondent bank. In the absence of any documents and representations, it cannot be said that the petitioners also

with a dishonest intention created a forged document and committed the offence of cheating.

6. The learned counsel appearing for the petitioners would further contend that in the complaint preferred before the Judicial Magistrate No.II, Coimbatore, nothing was averred against the petitioners and therefore, registering the case against the petitioners is nothing but an abuse of process of law and accordingly, they prayed to allow this Criminal Original Petition and to quash the FIR, as far as the petitioners are concerned.

7. Per contra, the learned Additional Public Prosecutor appearing for the 1st respondent Police, would submit that since an order of stay was granted by this Court, the investigation has not commenced so far and therefore, the 1st respondent, have no knowledge in respect to the agreement having by the petitioners with the 2nd respondent bank.

8. The learned counsel appearing for the 2nd respondent bank would contend that only on the belief that the petitioners entered into a Joint Venture Agreement with Accused Nos.3 and 4, the 2nd respondent bank sanctioned a loan to the 1st and 2nd respondent. Accordingly, petitioners are also liable to pay the amount due to the bank. In fact, at the time of sanctioning the loan to the 1st and 2nd accused, all the accused made a false representation before the bank as construction is going on. In otherwise, since the investigation is in the threshold stage, it cannot be said that the petitioners are not involved in the alleged offence. Accordingly, he prayed to dismiss this petition.

9. On considering the rival submissions made by the counsel appearing on either side, for deciding the issue involved in this petition, it is necessary to see the averments found in the First Information Report, which relates to this petition.

10. The averments found in the petition mentioned FIR discloses the fact that the Accused No.3, being the Director of Accused No.4-firm [M/s.Spring Fields Shelters Private Limited], himself agreed to stand as a guarantor to the proposed purchasers.

11. In the 1st week of January 2015, the Accused Nos.3 and 4 represented to the complainant bank that the Accused No.3, in his capacity as Director of the Accused No.4-firm, and as power agent of Accused Nos.5 to 11 had entered into a valid Agreement of Sale and Construction dated 31.12.2014, with the Accused Nos.1 and 2, represented by his power agent, the Accused No.2 for the sale of Flat No.406 in Block No.9 and for the sale of

Villa No.4 in block No.8. Similarly, for the purchase of Flat No.106 (Block No.10) 1st Floor, the Accused Nos.3 and 4, stood as guarantors and availed the loan on various dates. Therefore, the averments found in the said FIR discloses the fact that only on the strength of power of attorney given by the petitioners, the Accused Nos.3 and 4, stood as guarantors to the loan availed by the Accused Nos.1 and 2.

12. Further, the specific allegation levelled by the 2nd respondent against the petitioners and others, is that after availing the loan, nothing was constructed in the land owned by the petitioners and accordingly, with a dishonest intention, to deceive the 2nd respondent, on behalf of the petitioners, the Accused No.3 and 4, made representations and availed the loan, thereby, petitioners also have committed the offence.

13. At this juncture, it is admitted on either side that before availing the loan from the 2nd respondent, the petitioners herein being the owners of lands in Survey No.569, 547/1 and 548/2A, admeasuring an extent of 4.61 acres, have entered into a Joint Venture Agreement for developing the said property. Only on the strength of the said Joint Venture Agreement dated 10.02.2011, the Accused Nos.3 and 4, stood as guarantors to the loan availed by the Accused Nos.1 and 2. In fact, the procedure adopted by the bank is that the a part of the loan availed by the purchaser, has to be given to the developer for the purpose of construction work. It seems that the alleged loan availed by the Accused Nos.1 and 2 has been received by the Accused No.3 alone. Further, only upon the power of attorney given by the petitioners, the Accused Nos.3 and 4, have stood as guarantors. In this regard, vide General Power of Attorney dated 21.10.2013, all the petitioners herein, have executed a Power Deed in favour of the Accused Nos.3 and 4, wherein Clause No.16, reads as follows:

"To execute loan documents evidencing availing any loan, to deposit the title deeds by way of Mortgage by Deposit of title deeds, to execute deed of mortgage in favour of the bank, to present and register the Mortgage by Deposit of title deeds or the registered mortgage before the concerned Sub Registrars Office, to get back the said instrument after registration to hand over the said original documents to the concerned financial institutions or the banks and to operate the bank accounts and all other incidental acts thereto."

14. Now, on going through the said clause, it is made clear that the petitioners have appointed the Accused No.3, as their agent and also have given power to execute the loan documents for availing the loan. Therefore, it cannot be said that the Accused No.3 availed loan from the 2nd respondent bank, without

the knowledge of the petitioners. However, all these matters have to be looked into only by the trial Judge. While at the time of disposing of the application filed under Section 482 of Cr.P.C., it is not necessary to go into the merits of the factual averments found in the First Information Report.

15. At this juncture, it is relevant to see the following judgments of our Hon'ble Apex Court.

(i) In the case of Central Bureau of Investigations Vs. K.M.Sharan, reported in 2008 (2) SCC (Cr1.) 430, our Hon'ble Apex Court has held as follows:

"21. The powers possessed by the High Court under section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court ought to exercise its extraordinary jurisdiction of quashing the proceedings at any stage."

(ii). In State of Punjab and others Vs. Inder Mohan Chopra and others, reported in 2009 (2) SCC (Cr1.) 150, it was observed by our Hon'ble Apex Court as follows:

"9. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction....."

(iii) Further, in the case of SAU. KAMAL SHIVAJI POKARNEKAR vs. THE STATE OF MAHARASHTRA & ORS. in Criminal Appeal No. 255 of 2019, our Hon'ble Apex Court has held as follows;

"5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are Sonu Gupta v. Deepak Gupta and Ors. 2015 (3) SCC 424. disclosed, there would be no justification for the High Court to interfere.

6. Defences that may be available, or facts/aspects which when established during the trial, may lead to acquittal, are not grounds for quashing the complaint at the threshold. At that stage, the only question relevant is whether the averments in the complaint spell out the ingredients of a criminal offence or not."

16. Therefore, by applying the ratio laid down in the above referred judgments, herein also, the averments found in the First Information Report reveals the fact that the petitioners, being the landowners, have given power of attorney in favour of other accused for availing the loan. Herein it is a case, after availing the loan, they have not commenced the construction activity. In this regard, whether the petitioners are having a dishonest intention to deceive the bank or not, has to be decided only during the time of investigation or at the time of trial. In otherwise, since the averments found in the First Information Report disclose a cognizable offence against the petitioners, this Court is of the considered view that the registration of the FIR is not an abuse of process of law. Further, for securing the ends of justice, it is necessary to find out the truthfulness of the allegation levelled against the petitioners and for which, elaborate investigation is necessary.

17. Accordingly, in the light of the above discussion, the petition filed by the petitioners is devoid of merits and liable

to be dismissed. Accordingly, the present Criminal Original Petition is dismissed. Consequently, the connected Criminal Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Ars

To

1.The Inspector of Police,
R.S.Puram Police Station,
Coimbatore City.

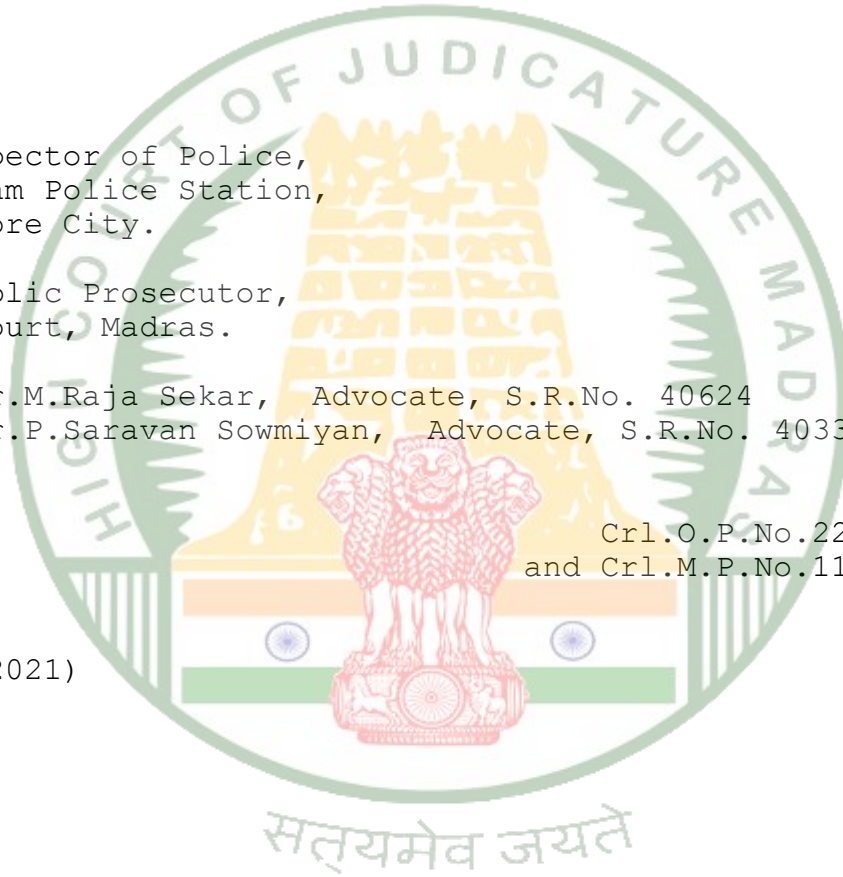
2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.Raja Sekar, Advocate, S.R.No. 40624

+1cc to Mr.P.Saravan Sowmiyan, Advocate, S.R.No. 40332

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