



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2020

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cr1 OP(MD)No.1807 of 2020

WEB COPY

T.N.Vijayasekar @ Dilip

... Petitioner

Vs.

1.The Inspector of Police,
Pattiveeranpatti Police Station,
Pattiveeranpatti, Nilakottai Taluk,
Dindigul District.

2.Vetrivel

3.Jeyamani

4.Rathinaprabha

5.Parimala

6.Sankar

7.Madhavan

... Respondents

Prayer : Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to direct the learned Judicial Magistrate, Nilakottai, Dindigul District to take the petition in unnumbered Cr.M.P No.not known of 2019 in C.C No.317 of 2017 on its file filed by the petitioner dated 02.09.2019 and decide the same on merits and in accordance with law within the time stipulated by this Hon'ble Court.

For Petitioner : Mr.V.Balaji

For Respondents : Mr.A.Robinson,
Government Advocate (crl.side) for R1

ORDER

The petitioner is the defacto complainant in C.C No.317 of 2017 on the file of the learned Judicial Magistrate, Nilakottai. He lodged information before Pattiverranpatti Police Station alleging that the accused/respondents 2 to 7 have committed the offences under Tamil Nadu Act No.38 of 2003 (Tamilnadu Prohibition of Charging Exorbitant Interest Act, 2003). The case was taken up for investigation and final report was filed against the accused for the offences under Sections 120(b), 147, 387, 417, 406, 420 and 506(i) of IPC r/w. Sections 3 and 4 of Tamilnadu Prohibition of Charging Exorbitant Interest Act, 2003. Cognizance of the offences was taken and the case is pending trial. In the meanwhile, the petitioner/defacto complainant filed a miscellaneous petition under Section 6 of the Act. The petition was returned by the learned Judicial Magistrate, Nilakottai on the ground that the



petitioner has to workout his remedy before the jurisdictional civil Court. This endorsement of return made by the learned Judicial Magistrate is under challenge in this criminal original petition.

2. Heard the learned counsel on either side.

WEB COPY

3. The case of the petitioner is that he borrowed a sum of Rs.18,00,000/- from A1. He would allege that he was made to cough up exorbitant interest amounts. His specific stand is that the property bearing Door No.6-2-33C, Sevugampatti Village, Nilakottai was also illegally taken possession by the accused. On the other hand, the learned counsel appearing for the private respondents would claim that there was no illegal taking of possession. According to them, the property in question was actually sold and the transaction was also duly registered in the form of a sale deed.

4. Section 6 of the Tamilnadu Prohibition of Charging Exorbitant Interest Act, 2003 reads as under :

"6. Restoration of possession of property.- The Court may, on filing a petition by the debtor, order the restoration of possession of property whether movable or immovable, if any, forcibly taken by any person towards repayment of the loan advanced or interest therefor."

Of course, in the Act, I do not find any provision defining what is "court". It is this absence of definition that has given rise to the present contest. While the counsel for the petitioner would state that the criminal court that is trying the case lodged by him will have the jurisdiction to order restoration of possession of his house property, the learned counsel appearing for the private respondents would want me to sustain the stand of the trial magistrate that it is only the jurisdictional civil court that must grant relief under this provision. Section 5 of the Act also talks of deposit of money and presentation of petition to "court" by the debtor and the procedure thereof. Section 5 of the Act reads as under :

"(1) A debtor may deposit the money due in respect of loan received by him from any person together with interest at the rate fixed by the Government under Section 7 of the Money-lenders Act, into the Court, having jurisdiction, along with a petition to record that the amount deposited is in full or part satisfaction of the loan including the interest therefor, as the case may be.

(2) The Court shall, on receipt of a petition under sub-section(1), refer a copy of the petition to the person mentioned in the petition, directing him to give his version of the case within a period of fifteen days as may be granted by the Court. The Court may, after due inquiry and after considering the versions of the parties, pass orders recording the satisfaction of the loan and interest therefor in



full or in part, as the case may be."

5. Now, the question is whether the expression "court" occurring in Section 5 as well as Section 6 of the Act should mean one and the very same court. The case on hand pertains to Section 6 of the Act and I therefore confine the discussion only to Section 6.

WEB COPY

6. I am of the view that the key to the problem lies in Section 11 of the Act. Section 11 states that the provisions of the Act shall be in addition to and not in derogation to the provisions of any other law for the time being in force. Therefore, it would be appropriate to read the provisions of the Act along with Section 456 (1) of Cr.PC. Section 456 of Cr.PC reads as under :

"Power to restore possession of immovable property.

(1) When a person is convicted of an offence attended by criminal force or show of force or by criminal intimidation, and it appears to the Court that, by such force or show of force or intimidation, any person has been dispossessed of any immovable property, the Court may, if it thinks fit, order that possession of the same be restored to that person after evicting by force, if necessary, any other person who may be in possession of the property:

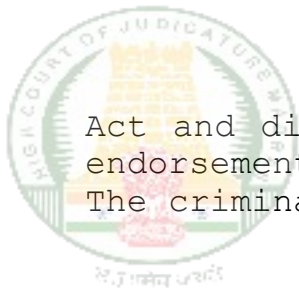
Provided that no such order shall be made by the Court more than one month after the date of the conviction.

2. Where the Court trying the offence has not made an order under Sub-Section (1), the Court of appeal, confirmation or revision may, if it thinks fit, make such order while disposing of the appeal, reference or revision, as the case may be.

3. Where an order has been made under Sub-Section (1), the provisions of section 454 shall apply in relation thereto as they apply in relation to an order under section 453.

4. No order made under this section shall prejudice any right or interest to or in such immovable property which any person may be able to establish in a civil suit."

7. The petitioner in his petition had alleged that he was forcibly dispossessed of his house property. The charges against the accused include the offence under Section 506(i) of IPC. Therefore, the judicial magistrate will very much have the jurisdiction to grant relief. However, the petition filed under Section 6 of the Act can be disposed of only at the conclusion of the trial and not pending trial. Therefore, without going into the merits of the matter, I direct the learned trial magistrate to number the petition filed by the petitioner under Section 6 of the



Act and dispose it of in the manner known to law. The impugned endorsement of return made by the trial magistrate is set aside. The criminal original petition is allowed.

WEB COPY

Sd/-

Assistant Registrar (ADII)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Skm

To

- 1.The Inspector of Police,
Pattiveeranpatti Police Station,
Pattiveeranpatti, Nilakottai Taluk,
Dindigul District.
- 2.The Judicial Magistrate, Nilakottai, Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

The section Officer,
E.R Section,MBMHC, Madurai.

(to return the original petition filed by the petitioner herein before the trial magistrate).

+1 CC to M/s.J.LAWRENCE, Advocate (SR-10715[F] dated 10/03/2020)

+1 CC to M/s.V.BALAJI, Advocate (SR-10942[F] dated 10/03/2020)

Cr1 OP(MD)No.1807 of 2020
09.03.2020

KB(12.06.2020) 4P 7C