



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:02.03.2020
CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

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Crl.O.P.(MD)No.7389 of 2015
and
Crl.M.P.(MD)Nos.1 and 2 of 2015

1.Umadevi
2.R.Sadhasivam

... Petitioners

vs.

1.State Rep. by
The Inspector of Police,
E3 Anna Nagar (L&O),
Madurai District.
Crime NO.634/2012

2.V.Suresh

... Respondents

PRAYER: Criminal Petition filed under Section 482 of Cr.P.C., to call for the records relating to the proceedings in C.C.No.230 of 2013, on the file of the Judicial Magistrate No.VI, Madurai and quash the same.

For Petitioners : Mr.T.Antony Arul Raj

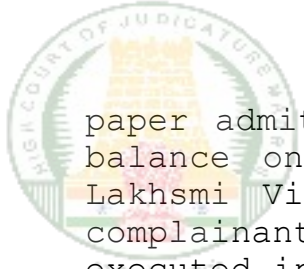
For R1 : Mr.K.Suyambulinga Bharathi
Government Advocate (Crl. side)

For R2 : No Appearance

ORDER

Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl. side) appearing for the first respondent. Though the second respondent has entered appearance through counsel, there is no representation on behalf of the second respondent.

2.This petition is filed under Section 482 of Cr.P.C., to quash all further proceedings in C.C.No.230 of 2013, on the file of the learned Judicial Magistrate No.VI, Madurai. The charge against the petitioners, based on the complaint given by one Suresh is that the petitioners herein borrowed a sum of Rs.3,00,000/- as hand loan from the de-facto complainant, based on the promise made by the petitioners that the money will be returned within a month. When the de-facto complainant requested to return the money back, the petitioners on 01.02.2010 executed a deed in twenty rupees stamp



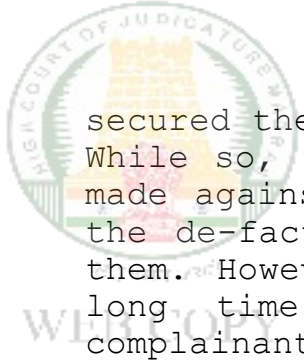
paper admitting the receipt of Rs.50,000/- and promised to pay the balance on a later date and as a security, the cheque drawn on Lakshmi Vilas Bank, dated 16.02.2010 was given to the de-facto complainant. Further, a mortgage deed for Rs.2,00,000/- was also executed in favour of the de-facto complainant in a stamp paper with a promise that due will be paid within two months. The specific complaint against the petitioners is that when the de-facto complainant demanded money back, the petitioners refused to pay the money and also threatened him that they will do away. Hence, alleging that the petitioners have borrowed money with an intention to cheat, the complaint has been filed and after investigation, C.C.No.230 of 2013 has been taken on file by the learned Magistrate.

3. According to the petitioners, the First Information Report itself is a counter blast for the complaint given by the petitioners against the de-facto complainant regarding harassment and an attempt to kidnap the daughter. Further, pointing out that the entire transaction is purely civil in nature, there is no criminal intent or element for the police to prosecute referring the complaint given against the de-facto complainant by the petitioners.

4. The learned counsel for the petitioners would submit that the case is a clear abuse of process of law and the ingredients under Sections 420 and 506(i) of IPC, is wholly absent in this case. Hence, he seeks to quash the criminal proceedings.

5. The learned Government Advocate (Crl. side) for the first respondent would submit that the petitioners herein after borrowing a sum of Rs.3,00,000/- from the de-facto complainant, has executed a mortgage deed, dated 16.02.2010 in respect of the property, which stands in the name of the first petitioner. The deed is a usufructuary mortgage on the promise that the de-facto complainant occupy the house and enjoy the property. Within two years, the petitioners will redeem the mortgage. However, on investigation, it is found that the said property was already let out to one Muthukumaraswamy and he was in occupation of the property. Therefore, the petitioners knowing fully well that the property has in occupation of a third party, had made the de-facto complainant to believe that their property at Plot No.579, K.K.Nagar First Floor, is available for occupation and entered into a deed of usufructuary mortgage, which is a deceptive intention at the stage of inception itself. Hence, on completion of investigation, the final report has been filed against the petitioners.

6. The specific case of the de-facto complainant is that his father retired in the year 2005 and he was in possession of money in the year 2010, which he was advanced as a hand loan to the petitioners herein. There are two documents, which are relied on by the de-facto complainant, namely, the undertaking letter given by the petitioners for repayment of money and the usufructuary mortgage deed. This deed would clearly indicate that there is a money transaction between the parties and the de-facto complainant has



secured the loan by way of mortgage deed and the undertaking letter. While so, to make out a criminal case certain allegations has been made against the petitioners as if the petitioners have threatened the de-facto complainant and refused to pay the money borrowed by them. However, there are contra evidence available to show that a long time dispute between the petitioners and the de-facto complainant, which has led to registration of the First Information Report for kidnapping, however, later closed as not traceable. Though the complaint of the petitioners against the de-facto complaint will not be very much relevant for the case on hand, there is every element to infer that a criminal color has been given to civil transaction, which has led to registration of the First Information Report and filing of final report in C.C.No.230 of 2013, which in the opinion of this Court is not liable to be quashed.

7. Accordingly, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

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/ /2020

Sub Assistant Registrar(CS)

To

1.The Judicial Magistrate No.VI, Madurai.

2.The Inspector of Police,
E3 Anna Nagar (L&O), Madurai District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.T.ANTONY ARULRAJ, Advocate (SR-9495[F] dated 02/03/2020)

+1 CC to M/s.T.PALANISAMY, Advocate (SR-10030[F] dated 04/03/2020)

Crl.O.P. (MD) No.7389 of 2015
02.03.2020

SJI

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