



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.03.2020

CORAM:

THE HONOURABLE **DR. JUSTICE G. JAYACHANDRAN**

CrI.O.P.(MD)No.16344 of 2016

and

CrI.M.P.(MD)No.7981 of 2016

1.J.Sivaraman ...Petitioner 1/Accused 1

2.O.Jeyapaul ...Petitioner 2/Accused 2

Vs.

1.State Rep by
Inspector of Police,
Valanthur Police Station,
Madurai District
Crime No.42 of 2015 ...1stRespondent/Complainant

2.B.Manoj ...2nd Respondent/Defacto
Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the case Diary files in Crime No.42 of 2015 on the file of the Valanthur Police Station, Madurai District and quash the same.

For Petitioners : No Appearance
For R1 : Mr.K.Suyambulinga Bharathi,
Government Advocate(CrI.side)
For R2 : Mr.A.Banumathy

ORDER

No representation for the petitioners. The learned counsel for the second respondent is present.

2.Perusal of the petition indicates that the petitioners have borrowed loan from the defacto complainant for purchasing of harvesting machine. The defacto complainant has advanced a sum of Rs.13 Lakhs to the petitioners during the month of February 2010. The petitioners have also given immovable property as security for the loan. In the complaint it is alleged that, on availing loan the petitioners has to pay instalment Rs.51,350/- per month. But they did not pay even the first instalment towards the loan due. When the defacto complainant approach them to hand over the vehicle, which is hypothecated, they refused to hand over the vehicle and also they have hidden the vehicle. From the very conduct of the petitioners, the defacto complainant has come to know that they have deceptively borrowed money to the tune of Rs.31 Lakhs to cheat him. Hence complaint has been given for the offence under Sections 406 and 420 IPC alleging that the petitioners have sold the hypothecated



vehicle and thereby cheated a sum of Rs.13 Lakhs with interest.

3.This complaint is now sought to be quashed by the petitioners on the ground that the defacto complainant has suppressed the remittance of Rs.7,79,350/- towards instalment. The entire transaction is civil in nature and the defacto complainant has given criminal colour to the transaction and trying to harass the petitioners.

4.It is contended by the petitioner that their property worth about Rs.28 Lakhs was given as additional security for the loan and therefore, the allegation of deception is not true. If the petitioners really had intention of cheating, they would not have mortgaged the property as security.

5.On going through the First Information Report this Court finds that the petitioners after availing loan, have not paid even single instalment, which is prompted the defacto complainant to lodge this complaint. However, in the quash petition the petitioners stated that they have paid a sum of Rs.7, 79,350/- towards instalment. If it is so, the petitioners has to appear before the Investigating Officer and produce all the receipts of his payment. Without producing receipts and without participating in the enquiry, the petitioners cannot seek quashing of FIR under Section 482 of Cr.P.C.

6.If the vehicle purchased from the loan amount and hypothecated to the second respondent is concealed and the petitioner have not paid even single instalment or over due in repaying, ingredients of offence under Sections 406 and 420 IPC gets attracted. Otherwise, the first respondent police will conclude the complaint as mistake fact. For the said purpose, the participation in the investigation is must and the Court cannot pre-conclude that the dispute between the petitioners and the defacto complainant is purely civil in nature. Therefore, this criminal original petition is dismissed.

7.The petitioners are directed to participate in the investigation and produce all the documents available with them regarding the transaction. On such production, the Investigating Officer shall consider the same and take appropriate decision, in accordance with law. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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Gns
To

- 1.The Inspector of Police,
Valanthur Police Station,
Madurai District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Cr1.O.P. (MD) No.16344 of 2016

CN(15.05.2020) 3P 3C