



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.01.2020

CORAM:

THE HONOURABLE **MR. JUSTICE A.D. JAGADISH CHANDIRA**

Crl.O.P. (MD) No.19105 of 2019

V.Thomas

: Petitioner

Vs.

1.Armstrong Thomas Kennady

2.Vijayakumar

3.Rathinasamy

: Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to direct the learned Judicial Magistrate, Valliyoor to number the petition submitted under Section 5 (i) and (6) of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 by the petitioner and consequently pass orders on merits, within stipulated time.

For Petitioner : Mr.C.Susi Kumar

ORDER

This Criminal Original Petition has been filed to direct the learned Judicial Magistrate, Valliyoor to number the petition submitted under Section 5 (i) and (6) of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 by the petitioner and consequently pass orders on merits, within stipulated time.

2.It is the case of the petitioner that he is the absolute owner of the property in survey No.2072/1, measuring 92 cents situated at Kavalkinaru, Perungudi Village. The petitioner had purchased the above said property through registered sale deed, dated 22.02.2008 in document No.961/2008. Since the petitioner faced financial crisis, he decided to borrow money on interest and he approached the second respondent and the second respondent introduced the petitioner to the first respondent, who is a money-lender. Thereafter, on 29.06.2015, the petitioner borrowed a sum of Rs.25,00,000/- from the first respondent. On the instruction of the first respondent, the petitioner had executed a formal sale deed in respect of 52 cents of the above said mentioned property for security purpose, since it is usual practice in that area, if someone borrowed huge amount for interest, they have to execute a formal sale deed for security purpose and after repayment of loan amount, the property will be reconvened to the borrower/owner.

3.The petitioner after borrowing the loan, had paid a sum of Rs.7,50,000/- as interest to the first respondent and he has also issued three cheques towards the principal amount of Rs.5,00,000/- and the first respondent had encased two of the cheques and the petitioner repaid the balance amount by cash of Rs.5,00,000/-, the remaining cheques was handed over to the petitioner. Out of

Rs.25,00,000/- borrowed, the petitioner has so far repaid a sum of Rs.15,00,000/- with interest.

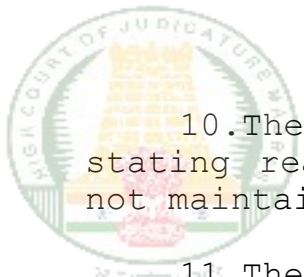
4. Thereafter, the petitioner had arranged remaining amount of Rs.10,00,000/- and had approached the first respondent whereas the first respondent did not come forward to receive the amount. Subsequently, he came to understand that the first respondent had executed a power deed in favour of the second respondent on 29.10.2018 through registered document No.2762 of 2018. In turn, the second respondent has conveyed the property to the third respondent, who is his father.

5. Since the petitioner was purposefully and intentionally cheated, he had filed a complaint under Section 5 (I) and (6) of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 by deposit of money due in respect of loan received by him with interest at the rate fixed by the Government under Section 7 of Money Lenders Act, before the learned Judicial Magistrate, Valliyoor.

6. The learned Magistrate had returned the petition stating that the prayer in the petition is civil in nature and thereby, the petition is not maintainable. Against the order of return of the complaint, the present petition has been filed.

7. The learned counsel appearing for the petitioner would submit that the learned Judicial Magistrate, Valliyoor ought to have entertained the petition and passed orders on merits. He would submit that the learned Magistrate failed to take into consideration the fact that the Act provides for filing of petition to deposit of money due in respect of loan received by him together with interest at the rate fixed by the Government under Section 7 of the Money Lenders Act and that 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 15 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. However, the learned Magistrate has not entertained the petition.

8. He would submit that the petitioner is prepared to deposit a sum of Rs.10,00,000/-, which is the remaining amount due to be paid to the first respondent. He would further submit that the petitioner had resubmitted the returned papers stating the reasons whereas the learned Magistrate has simply returned the petition and thereby would seek that a direction may be issued to the learned Magistrate to take the petition on file and pass orders on merits and in accordance with law.



10.The petition filed by the petitioner has been returned stating reason that without cancelling sale deed, the petition is not maintainable.

11.The petition has been filed under Section 5(i) & 6 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act. The Act provides for filing a petition by a debtor and the Court may proceed with the case and order the restoration of the property after enquiry.

12.The learned Magistrate has returned the petition stating that the petition is not maintainable. In the considered view of this Court the petitioner has to be heard and orders have to be passed on merits. The learned Judicial Magistrate, Vallioor is directed to take the petition on file and hear the petitioner and pass orders on merits. It is made clear that this Court has not expressed any opinion with regard to the merits of the case. Registry is directed to return the original complaint to the learned counsel for the petitioner, after substituting the same with a photocopy. The returned papers shall be resubmitted before the learned Judicial Magistrate, Vallioor, within 10 days from the date of receipt of a copy of this order. Accordingly, this criminal original petition is allowed.

Sd/-

Assistant Registrar (Cs-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

gns
To
The Judicial Magistrate, Valliyoor.

COPY TO:
The Section Officer, Cr1.Section, (2 copies)
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.C.SUSIKUMAR, Advocate (SR-2533[F] dated 23/01/2020)

Cr1.O.P. (MD) No.19105 of 2019
22.01.2020

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