IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2021

CORAM:

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

Crl.O.P.No.17264 of 2015
and Crl.M.P.No.247 of 2017 and M.P.No.1 of 2015

V.Jagan Mohanambal .. Petitioner/Single Accused

Vs.

K.C.Mohankumar .. Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the criminal complaint in C.C.No.77 of 2015 on the file of the learned Judicial Magistrate, Kangayam and quash the same by allowing this Criminal Original Petition.

For Petitioner : Mr.R.T.Vishnu
for Mr.N.Manokaran

For Respondent : No Appearance

ORDER

I had the benefit of hearing Mr.R.T.Vishnu, learned Counsel for the petitioner on 09.09.2021, with respect to the facts of the present case. Thereafter, the matter was again adjourned to 27.09.2021, owing to the absence of the respondent.

2. It had been informed that the respondent is an Advocate, who appears party-in-person. I was very much surprised by the decision taken by the respondent to abstain from appearing before this Court. It would have been expected that an Advocate, who has duty to appear on behalf of his clients, would also show same diligence while appearing on his own behalf as party-in-person.

3. The matter was held over to 06.10.2021/today. Again, today, there is no appearance on behalf of the respondent. The name and address of the respondent/Advocate is printed in the cause list. Probably, he had taken a conscious decision that it would be advantageous to him to refrain from appearing before this Court. But, it would be extremely inappropriate to keep adjourning this case, owing to the absence of the respondent/Advocate.

4. The petitioner herein was Branch Manager of Canara Bank, Modakurichi Branch, Modakurichi, Erode district. The respondent/Advocate had initially borrowed a sum of Rs.50,000/-, after executing necessary documents. This was on 29.12.2006. The amount was repaid on 22.12.2007. Thereafter, a fresh borrowal arose on the basis of a consent document executed by the respondent on 28.12.2007.

5. It is a claim of the petitioner herein that the respondent had given necessary consent forms for such renewal. However, it appears that the respondent disputes such contention. At any rate, Rs.50,000/- was credited to the account of the respondent herein.

6. A perusal of the statement of accounts of the respondent shows that as on 01.09.2007, the balance available was Rs.949/-. Thereafter, on 28.12.2007, a further sum of Rs.50,000/- had been credited. The balance, therefore, became Rs.50,949/-.

7. It is the contention of the respondent that he had not sought for that loan. He had also not executed any consent form for seeking renewal of the loan or seeking afresh loan. However, on the very same day, when that amount was credited to his account on 28.12.2007, the respondent had withdrawn Rs.15,000/-, which, naturally, indicates that he had utilized the loan of Rs.50,000/- advanced to him.

8. After having benefited from such loan, it does not augur well on the part of the respondent to deny that he had not executed any document and also allege that the petitioner herein had created those documents.

9. The second loan was not repaid, necessitating the bank to institute a suit in O.S.No.24 of 2011. The petitioner was examined as PW.1 and documents, on behalf of the plaintiff, were marked as Exs.A1 to A7. The respondent herein was examined himself as DW.1 and also marked Exs.B1 to B7. This, naturally, means that he had also participated in the trial proceedings and if it has to be reasonably presumed that he had taken up a defence that the documents created had been created by the petitioner herein, and that such defence had been answered while delivering judgment in such suit.

10. A decree was passed in the suit. Naturally, the defence was not taken into consideration by the learned Trial Judge. Thereafter, the respondent appears to have turned around and had given a complaint under Section 200 of Cr.P.C., before the learned Judicial Magistrate, Kangayam and after going through the normal process, the complaint was taken cognizance as C.C.No.77 of 2015, which is now sought to be quashed by the petitioner herein.

11. I hold that the entire complaint is an abuse, particularly, because the respondent had utilized the loan amount, advanced to him. He had balance of Rs.949/- in his bank account. The additional loan amount of Rs.50,000/- was credited on 28.12.2007. There were no other credits to the said account.

12. On 28.12.2007, the respondent withdrew Rs.15,000/-. This, naturally, indicates that he had used the said loan amount. Therefore, turned around and claiming that he had not consented for grant of the additional amount, is clearly an after thought and I hold that the entire process is an abuse and therefore, would quash further proceedings in C.C.No.77 of 2015, now pending on the file of the learned Judicial Magistrate, Kangayam.

13. The fact that the suit had also ended in a decree in favour of the petitioner also lends further credence to my conclusion. The fact that the respondent had deliberately not chosen to appear before this Court also shows that he is not further interested in prosecuting the Calendar Case in C.C.No.77 of 2015 and is also not directly or indirectly interested either in its progress or it being curtailed further by the orders of this Court.

14. Further progress is curtailed and the said Calendar Case is quashed by this order.

15. With the above said observation, the present Criminal Original Petition is allowed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

grs/tri

To

The Judicial Magistrate,
Kangeyam.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.52415

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JP-II(CO)
CB(01/11/2021)