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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.09.2021

PRONOUNCED ON : 30.09.2021

CORAM

THE HON'BLE Mr. JUSTICE C.V.KARTHIKEYAN

Crl.O.P.No.22901 of 2016

and Crl.M.P.Nos.10722 and 10723 of 2016

C.V.Mohan Prakash .. Petitioner/Accused No.2

Vs.

1.State rep. by the Inspector of Police,
East Police Station,
Pollachi,
Coimbatore District. .. Respondent No.1/Complainant

2.P.Mohan Kumar .. Respondent No.2/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in C.C.No.182 of 2013, on the file of the Judicial Magistrate No.I, Pollachi and quash the same against the petitioner.

For Petitioner .. Mr.A.Thiyagarajan

For R1 .. Mr.E.Raj Thilak
Additional Public Prosecutor

For R2 .. No Appearance

ORDER

This petition has been filed under Section 482 of Code of Criminal Procedure seeking to quash C.C.No.182 of 2013, now pending on the file of the learned Judicial Magistrate No.I, Pollachi.

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2. The petitioner is the second accused. It must be mentioned that even though notice had been directed to the second respondent/defacto complainant and a learned Counsel had also entered appearance, there was consistently no appearance on behalf of the second respondent. This Court had granted more than sufficient opportunity for appearance on behalf of the second respondent. However, since the complaint, which had been given by the second respondent, had been, subsequently, enquired into, on registration of the First Information Report by the first respondent and report had also been filed, which had been taken cognizance by the learned Judicial Magistrate No.I, Pollachi and the first respondent is represented by the learned Additional Public Prosecutor, I hold that I can proceed further by examining the merits of the petition.

3. Heard Mr.A.Thiyagarajan, learned Counsel for the petitioner/A2 and Mr.E.Raj Thilak, learned Additional Public Prosecutor for the first respondent.

4. The second respondent herein had stood guarantee by offering his property as collateral security in a loan obtained by A1 from the State Bank of India, Pollachi branch. The petitioner/A2 and A1 are brothers. the petitioner was also working in the State Bank of India at Pollachi branch. The second respondent is the brother-in-law of A1. The loan obtained by A1 was not repaid. Therefore, the property offered by the second respondent was brought up for sale and after following due process, the said property was sold. Alleging that A1 and A2 and other accused had joined in conspiracy, the defacto complainant had given a complaint to the first respondent, who registered F.I.R in Crime No.879 of 2011 under Sections 467, 468, 471, 109, 149, 417, 420, 409, 120(b) of I.P.C.

5. It must also be mentioned that when the State Bank of India initiated auction proceedings, the second respondent had also filed a statutory appeal in S.A.No.25 of 2010 before the Debt Recovery Tribunal. That was dismissed on 20.04.2010. The second respondent had also filed O.S.No.65 of 2006 on the file of Sub Court at Pollachi, which had also been dismissed on 13.03.2008. The first appeal in A.S.No.55 of 2008 had also been dismissed by the Principal District Judge. The appeal, filed against the order of the Debt Recovery Tribunal, in R.A.(S.A)

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No.483 of 2010 had also been dismissed by the Debt Recovery Appellate Tribunal. A Writ Petition filed in W.P.No.12875 of 2009, questioning an interlocutory order by the Debt Recovery Tribunal and a Writ Petition in W.P.No.10798 of 2010 filed against the order of Debt Recovery Tribunal in S.A.No.25 of 2010 were both also dismissed.

6. Thereafter, the second respondent filed a private complaint before the learned Judicial Magistrate No.I, Pollachi. A sworn statement was recorded and after that, the private complaint was dismissed on 21.10.2010. A revision, filed against the said order in Crl.R.C.No.77 of 2011, was also dismissed as not pressed.

7. After taking all these steps and suffering adverse orders continuously, the second respondent, then lodged a police complaint and the first respondent registered F.I.R in Crime No.879 of 2011, as stated above, against A1 and A2 and also against three named auction purchasers of the property.

8. The F.I.R was quashed in Crl.O.P.Nos.1076, 1083 and 1084 of 2012 by order, dated 05.03.2012, with respect to the three auction purchasers.

9. Thereafter, the first respondent filed final report, which was taken cognizance as C.C.No.182 of 2013 by the learned Judicial Magistrate No.I, Pollachi. In the final report, apart from A1 and A2, other bank officials had also been arrayed as accused.

10. The Calendar Case was quashed against the said three bank officials in Crl.O.P.No.32036 of 2016, by order dated 11.02.2016.

11. The petitioner/A2 was also a bank employee. His brother had obtained loan from the bank. The second respondent/brother-in-law of A1/the borrower had offered his property as collateral security for the loan. A1 defaulted in repayment of the loan. The property was brought for auction, after following due process. The attempts to set aside by the second respondent the auction failed. The attempts to file a private complaint failed.

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12. The First Information Report was quashed against the auction purchasers. The Calendar Case was quashed against the other bank officials.

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13. The Calendar Case had been taken cognizance under Sections 467, 468, 471, 109, 417, 420, 409, 120(b) of I.P.C. I am not able to understand how Sections 467, 468, 471 are attracted. They can be attracted only when ingredients mentioned under Section 464 of Cr.P.C., are stated in the complaint. Admittedly, there has been no forgery of any document. The documents indicate that the title was with the second respondent. If they were said to be forged, then, it would only be the second respondent who had given forged documents as security for the loan obtained by his brother-in-law/A1. That is thankfully, not the case. The loan had been sanctioned after following due process. The role of the petitioner was not even to sanction the loan or even to approve the loan. He was only an employee of the State Bank of India.

14. It is contended that he induced the second respondent to give his property as security for the loan. But, the second respondent, is not handicapped in any manner whatsoever to take an independent decision whether to actually give his title deeds of his property as security to the loan of A1. He had taken a conscious decision to give his title deeds as security. A1 was his own brother-in-law. The present petitioner is not directly related to the second respondent.

15. Insofar as the offences under Sections 417, 420 and 409 are concerned, I do not know how they had been attracted, since, the petitioner herein was neither a beneficiary of the loan nor was the beneficiary on the property being auctioned, nor had purchased the property during the auction, nor had either approved or sanctioned the loan. Therefore, the said provisions are not at all attracted.

16. The second respondent had knocked all doors to frustrate the legitimate actions taken by the bank to recover the money, lent to A1. He first went to the Debt Recovery Tribunal. He failed. He went to the Civil Court. He failed. He filed Writ Petitions. They were dismissed. He then gave a private complaint. That was also dismissed. He had then given a police complaint and a First Information Report had been registered. In

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the First Information Report, the auction purchasers were named as accused. The First Information Report was quashed as against the said auction purchasers. The investigating agency, then named three other officials of the State Bank of India, as accused in the final report. The Calendar Case was quashed as against the said three officials.

17. I find no reason to permit continuation of the Calendar case as against the petitioner/A2 herein. He was just a bystander. He had no active role either in the sanctioning of the loan or in the recovery process. He incidentally happened to be the brother of A1, the borrower. That would not be a ground to face a criminal trial, which, viewed from any angle, would only be a torturous experience. The possibility of conviction is extremely remote. Continuation of the Calendar Case against the petitioner would only be an act of oppression.

18. Therefore, I would interfere with the further proceedings in C.C.No.182 of 2013 and quash the same insofar as the present petitioner/A2 is concerned, since, on the face of reading the final report, no cognizable offence has been made out as against the petitioner herein. The facts stare in the face of the second respondent. All his ventures had ended in failures and dismissals. The present petitioner/A2 cannot be forced to face the ordeal of trial, particularly, when he was, as stated repeatedly above, neither directly involved in the sanction of loan or approval of loan or in the recovery of the loan.

19. The present Criminal Original Petition is, therefore, allowed and C.C.No.182 of 2013, on the file of the learned Judicial Magistrate No.I, Polachi is quashed insofar as the petitioner/A2 is concerned. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IX)

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Sub Assistant Registrar

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To

1.The Judicial Magistrate No.I,
Pollachi.

2.The Chief Judicial Magistrate,
Coimbatore.

3.The Inspector of Police,
East Police Station,
Pollachi,
Coimbatore District.

4.The Public Prosecutor,
High Court, Madras-104.

+1cc to M/s.A.Thiyagarajan, Advocate, S.R.No.51110

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and 10723 of 2016

PMK(CO)
SB(01/11/2021)

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