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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2021

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.R.C.NO.186 OF 2020

A.Habibur Rahman,
S/o, Abdul Muthalifa

... Petitioner

Versus

1. A.Mohammed Mustafa,
S/o, Abdul Muthalifa

2. A.Abdul Wahid,
S/o, Abdul Muthalifa

3. Faridha Banu,
W/o, Abdul Wahid

... Respondents

PRAYER:-

Criminal Revision Petition filed under Section of the Code of Criminal Procedure, to set aside the order in C.M.P.No.1977 of 2019 by the learned XVIII Metropolitan Magistrate, Saidapet, Chennai dated 21.10.2019.

For Petitioner : M/s.Vedavalli Kumar

ORDER

This Criminal Revision Petition has been filed to set aside the order dated 21.10.2019 passed in C.M.P.No.1977 of 2019 on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai.

2. Brief facts of the case of the petitioner/defacto complainant is as under:-

The petitioner and his family members were doing business jointly for many years. At present, the petitioner is having



readymade shop at Velchery and his elder brother A.Mohammed Mustafa, the first respondent herein is also having footwear shop at Maduranthangam and his younger brother is having a footwear shop at Velachery. Whiles, the owner of the elder brother's shop premises had informed that he had intended to sell the property. On hearing the same, his elder brother had proposed to purchase the same and since he was not having enough money to purchase the same, he had requested the second respondent, his younger brother to give the amount as hand loan. The third respondent, who is the wife of the second respondent had refused to give amount as loan and had suggested that she would purchase the shop portion and allow the first respondent to run it on a rental basis. She and her husband requested the petitioner to give amount of Rs.8,50,000/- to purchase the property. She was also aware that the petitioner was having money for his daughter's marriage. She assured that she would pay Rs.15,000/- per month till the date of repayment of the amount. Believing their words, the petitioner gave the said amount. Thereafter, the third respondent and her husband did not come forward to repay the amount to the petitioner and when the petitioner questioned, they had replied that have high level influence and also refused to pay Rs.15,000/- per month and also threatened the petitioner with dire consequences. Since the accused threatened the petitioner, he preferred a complaint before the Inspector of Police, Velachery Police Station, Chennai on 19.01.2019. Since the Police had refused to register the complaint, the petitioner had filed an application in CrI.O.P.No.5376 of 2019 before this Court. This Court, by an order dated 02.12.2019, had granted liberty to the petitioner to workout his remedy in accordance with the guidelines laid down in the decision of a Division Bench of this Court in CrI.O.P.No.13681 of 2018. Thereafter, the petitioner filed a petition before the learned XVIII Judicial Magistrate, Saidapet. The learned Magistrate found that the dispute between the parties is civil in nature and had refused to take the complaint on file stating that no prima facie case is made out, against which, the petitioner has filed the present Revision Case before this Court.

3. The learned counsel for the petitioner would further submit that the petitioner and the first and second respondents are siblings and the third respondent is the sister-in-law of the petitioner. He would further submit that the respondents induced the petitioner to lend them a sum of Rs.8,50,000/- and did not repay the amount and had cheated the petitioner, however, the learned Magistrate, without taking into consideration the averments in the complaint, had dismissed the petition stating that no prima facie case is made out. Hence, she seeks to set aside the order.



4. Heard the learned counsel for the petitioner and perused the materials available on record.

5. The petitioner/complainant and respondents 1 and 2 are siblings. The third respondent is the wife of the second respondent. It is the case of the petitioner that respondents 2 and 3 had borrowed an amount of Rs.8,50,000/- from him for the purchase of a shop and they had agreed to pay Rs.15,000/- per month till the entire amount of Rs.8,50,000/- is repaid. It is the further case of the petitioner that the respondents had not only refused to return the money but also had threatened him. The petitioner had preferred a complaint to the police and since no action was taken, the petitioner had approached this court and the court had directed him to work out his remedy in accordance with the guidelines laid down in the decision of a Division Bench of this court in CrI.O.P.(MD) No.13681 of 2018. The petitioner had, thereafter, preferred a complaint before the learned Magistrate. The learned Magistrate, finding that the dispute between the parties was in respect of a money dispute, which is civil in nature and also finding that the complaint does not disclose any ingredients of the offences alleged, had dismissed the same.

6. A perusal of the materials available on record viz., the complaint preferred to the Police and the complaint filed before the Judicial Magistrate do not disclose any offences of cheating, this court is of the opinion that an attempt has been made by the petitioner to convert a civil dispute regarding non repayment of money as a criminal case. The Hon'ble Apex Court repeatedly deprecated the practice of converting civil disputes into criminal disputes. The learned Magistrate, rightly finding that no offence as alleged is made out in the complaint, had dismissed the petition.

7. This court does not find any error or infirmity in the order passed by the learned Magistrate. Accordingly, the Criminal Revision Case is dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mfa/ssk



To

The XVIII Metropolitan Magistrate,
XVIII Metropolitan Magistrate Court,
Saidapet, Chennai.

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+2ccs to M/s.Vedavalli Kumar, Advocate, S.R.No.57405

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PMK (CO)
PBS/03/12/2021