

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Crl.OP.No.6001 of 2016
and
Crl. MP No. 3082 of 2016

1.C.Kanchana,
2.C.Sivakumar

... Petitioners

Versus

T.Maharajan

... Respondents

Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.448 of 2015 on the file of the Judicial Magistrate -V, Coimbatore and quash the same.

For Petitioner : Mr.K.S.Karthik Raja

For Respondents : Mr.K.Venkatesubban

ORDER

This Criminal Original Petition has been filed to call for the records in C.C.No.448 of 2015 on the file of the Judicial Magistrate -V, Coimbatore and quash the same.

2.The case of the petitioners herein is that they are the owner of the property on D.No.130-A, Samy Iyer New Street, Coimbatore -01. On 04.04.2014, the petitioners herein have entered into an usufructuary mortgaged with the respondent as per which a sum of Rs.2,75,000/- was received by the petitioners herein from the respondent. On the basis of the usufructuary mortgage, the de-facto complainant/respondent is residing in the premises along with his family members. While so, Tamil Nadu Mercantile Bank has filed a case against the petitioners for recovery of the mortgage loan amount payable by the petitioners. For the purpose of recovery of the loan amount, the Bank has filed a case before the Debts Recovery Tribunal and the Tribunal issued a notice to the respondent herein, who is residing in the property, as a tenant. According to the respondent, the petitioners, without disclosing the earlier mortgage with the Tamil Nadu Mercantile Bank, has entered into a Usufructuary mortgage with the respondent and received amount on 04.04.2014. In this context, the respondent has filed a private complaint under Section 200 of Cr.PC before the learned Judicial Magistrate No.V, Coimbatore. The Court after taking the complaint on file,

issued summons to the petitioners. Challenging the same, the petitioners are before this Court with this Petition to quash the complaint in C.C.No.448 of 2015 on the file of the Judicial Magistrate -V, Coimbatore.

3.The learned counsel for the petitioners submitted that the complaint does not make out a case against the petitioners herein and the same will not fall within Section 140 of Cr.PC. The de-facto complainant/respondent herein approached the petitioners for lease of the property through a broker. The broker in turn approached the petitioners for leasing out the property by entering into a usufructuary mortgage. Therefore, the petitioners have no direct link with the de-facto complainant and the question of cheating or suppression of material facts will not arise.

4. It is further stated that the Petitioners, as owner of the property, entered into a usufructuary mortgage with the respondent and received lease amount, which has to be returned to the respondent at the time of vacating the premises without any interest. It is not the case of the respondent that the petitioners refuse to return the lease amount of Rs.2,75,000/-. It is the case of the respondent that the petitioners, by suppressing the subsistence of mortgage with Tamil Nadu Mercantile Bank has entered into the usufructuary mortgage with him on 04.04.2014. Thus, it is evident that the dispute between the petitioners and the respondent is purely a civil dispute which has to be resolved through a competent Civil Forum, but, the de-facto complainant is trying to convert the civil claim into criminal claim. The petitioners also agreed to return the mortgage amount of Rs.2,75,000/- to the respondent before the Commissioner of Police, B1 Police Station, Coimbatore, within a period of 4 months. Even though the petitioners are willing to pay the mortgage amount to the respondent, he initiated criminal action against them. Thus, the remedy will not be available under the criminal law, it is only under the civil law.

5. The Learned counsel for the respondent would submit that it is true that the de-facto complainant approached the broker and thereafter, entered into a usufructuary mortgage on 04.04.2014 but the petitioners suppressed the fact that they have already mortgaged the property with the Bank of Tamil Nadu Mercantile, for an amount of Rs.2,75,000/- and for non-payment of the amount, the Bank has initiated SARFAESI proceedings for recovery of amount of 40 lakhs. The petitioners are well aware of the mortgage entered into with the bank but suppressing the same, they have cheated the tenant ie., the de-facto complainant and received the lease amount with false promise. Further, for non-payment of the amount to the Bank, the Bank has initiated SARFAESI Proceedings against the petitioners to bring the property for auction. In fact, the petitioners promised to pay the amount of Rs.2,75,000/- and requested not to take any action against them. In spite of such promise they have not repaid the amount. Therefore, the respondent has filed the private Private complaint.

6. On perusing the written agreement dated 04.04.2013, it is seen that the petitioners did not disclose about the earlier mortgage at the time of entering into the agreement dated 04.04.2013. Whether such suppression is wilful or the mortgage with the Tamil Nadu Mercantile Bank was made known to the respondent can be gone into only by the court below. This Court cannot go into the dispute and quash the private complaint filed against the petitioners at this stage. Hence, this Court is of the view that the petitioner has not made out any case for quashing the proceedings.

7. The private complaint was filed in the year 2015, therefore, the Court below is directed to dispose of the same within a period of six months from the date of receipt of a copy of this order. The Parties are at liberty to raise all their contentions which were raised before this Court at the time of trial. If the petitioners return back the money to the respondent the same also can be considered by the Court below.

8. With the above observations and directions, this Criminal Original Petition is disposed of. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-CCC)

//True copy//

Sub Assistant Registrar

klt

To

The Judicial Magistrate -V
Coimbatore

+1cc to Mr.K.S.Karthik Raja, Advocate SR.No.22527

Crl.OP.No.6001 of 2016

SR II(CO)
GMY(28/06/2021)