IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.O.P.NO.21051 OF 2018
AND
CRL.M.P.NO.11431 OF 2018
AND
CRL.M.P.NO.4336 OF 2019

N.Rathinasamy ...Petitioner

Vs

1. The State Represented by the Inspector of Police, Central Crime Branch, Tiruppur.

2. Loganathan ...Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records to Crime No.28 of 2017 on the file of the Inspector of Police, Central Crime Branch, Tiruppur and quash the same.

For Petitioner : Mr.Silambannan For M/s. Kaavya Silambannan Associates

For Respondents : Mr.C.E.Pratap (R1) Government Advocate (Crl.Side)

Mr.T.Nixon (R2)

ORDER

This Criminal Original Petition has been filed seeking to call for the records in Crime No.28 of 2017 on the file of the Inspector of Police, Central Crime Branch, Tiruppur and quash the same.

2. The case of the petitioner is that he is doing garments business in the name of 'Sai Vision Impex' in a good manner and further, he is having good turnover in the business and the 2nd respondent had approached him seeking loan, by mortgaging the property, on the assumption that the petitioner is having good terms with the bank and if the petitioner recommends, loan will be sanctioned immediately. Further, the petitioner applied for a over draft loan in the Corporation Bank, Veerapandi Branch, and the manager insisted for security for the loan amount. The 2nd respondent has given his property as security for the loan obtained by the petitioner, by depositing the title deeds. The bank sanctioned a loan amount of Rs.1,79,00,000/-. The 2nd respondent has given security with his knowledge and not under the compulsion of the petitioner. After the sanctioning of the loan, the 2nd respondent obtained money amounting to Rs.60,00,000/- from the petitioner. Further, the petitioner has also utilised the loan amount for his business purpose and at that time, there was a smooth relationship between the petitioner and the 2nd respondent. However, the loan amount was not repaid in time and the bank took action to recover the amount by invoking the provisions of the Securitisation And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and proceedings were pending with the Debt Recovery Tribunal. Further, the 2nd respondent has lodged a complaint before the first respondent and FIR was registered in Crime No.28 of 2017 and the same was taken on file. Based on the complaint, the petitioner was arrested and released on bail on 17.01.2018. seeking to quash the complaint, the present petition has been filed.

3. The learned counsel for the petitioner submitted that the petitioner and the defacto complainant are friends. Since the petitioner was successful in his business, the defacto complainant approached the petitioner with a view to get loan from bank. Accordingly, the petitioner, with a view to help the defacto complainant, had approached the Corporation Bank and applied for loan for a sum of Rs.1,79,00,000/-.. The loan amount was sanctioned. The defacto complainant has given the title deeds of his property as mortgage documents. Due to unavoidable situation, the petitioner defaulted in repayment of dues. It is the case of the petitioner that he was making earnest efforts to discharge the loan. In the meantime, the secured creditor, the bank, has brought the property of the defacto complainant for auction. Therefore, the defacto complainant has lodged a complaint against the petitioner before the respondent police for the offences under Sections 120B, 465, 406, 409, 468, 471 of IPC. The learned counsel for the petitioner further submitted that since the defaco complainant has mortgaged his property, the bank had acted against the said property. It is also the case of the petitioner that the defacto complainant had obtained

a loan of Rs.60,00,000/- from the petitioner and he is yet to repay the same. In order to avoid said repayment, the defacto complainant has lodged the present complaint.

4. The learned counsel for the defacto complainant vehemently contended that the petitioner was not prompt in the repayment of loan amount and that the petitioner had indeed, lured the defacto complainant to submit the title deed of his property as mortgage documents and obtained a huge amount to the tune of Rs.1,79,00,000/- as loan. The learned counsel further submitted that the defacto complainant is innocent and has submitted the title deeds, to help the petitioner and because of non-repayment of loan amount by the petitioner, his property has been auctioned and matter is pending before the DRT.

5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. In State of Haryana – Vs – Bhajan Lal (1992 Supp (1) SCC 335), the Hon'ble Supreme Court has expounded the circumstances and the situations in which the inherent power u/s 482 should be invoked for quashment and for better appreciation, the relevant portion is extracted hereunder :-

> “In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide myriad kinds of cases wherein such power should be exercised:
>
> (a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the ac cused;
>
> (b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institu- tion and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. In the instant case, the allegations made in the complaint, do clearly constitute a cognizable offence and this case does not call for the exercise of extraordinary or inherent powers of the High Court to quash the F.I.R. Itself."

7. In the decision reported in AIR 1960 SC 866 R.P.Kapur – Vs – State of Punjab, the parameters within which the exercise of inherent powers vested by Section 561-A of the repealed Code of Criminal Procedure, 1898 (corresponding to Section 482 Cr.P.C.) can be invoked had been laid down by the Supreme Court in the following terms:-

"(i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned

> proceedings would secure the ends of juscite;
> (ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g., want of sanction;
> (iii) where the allegations in the first information report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and
> (iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge."

8. It is elementary that when a property is mortgaged for loan amount, in case the creditor fails in repayment of loan, the secured creditor can take action against the property given as security. It is not the case of either the petitioner or the defacto complainant that the bank has acted in a manner prejudicial to their rights or any provisions of the existing provisions have been misused by the bank. The dispute between the petitioner and the defacto complainant is purely a matter of breach of trust and the matter cannot be decided by this Court invoking the jurisdiction conferred under Section 482 of code of Criminal Procedure.

9. On a careful consideration of the materials and also the ratio laid down by the Hon'ble Supreme Court in the above cited decisions, it is clear that the issue involved herein requires evidence to be let in and documents marked and only after trial. The issues can be adjudicated and the FIR cannot be quashed merely based on the materials submitted by the petitioner in the form of affidavit.

10. This Criminal Original Petition fails and the same is liable to be dismissed. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

msrm

To

1. The Inspector of Police,
   Central Crime Branch,
   Tiruppur.

2. The Public Prosecutor
   High Court of Madras.

+2ccs to Mr.T.Nixon, Advocate, S.R.No.34817

Crl.OP.No.21051 of 2018
and Crl.M.P.No.11431 of 2018
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KSM(CO)
RLP(22/09/2021)