

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.O.P.NO.18884 OF 2018

AND

CRL.M.P.NO.9969 OF 2018

1. Deepak Kothari
2. Nirmaladevi Kothari ... Petitioners/Accused 1 & 2

.Vs.

1. The State,
Rep.by its Inspector of Police,
District Crime Branch,
Vellore.
(FIR No.38 of 2018)

2. S.C.Sanjeev Kumar ... Respondents

PRAYER:-

Petition filed under Section 482 of Cr.P.C., to call for the entire records in Cr.No.38 of 2018 on the file of the 1st respondent Police and to quash the same as illegal.

For petitioner : Mr.Govind Chandrasekhar

For RR1 : Mr.C.E.Pratap
Government Advocate
(Crl.Side)

For RR2 : Mr.V.Sekar

O R D E R

The petitioner has filed this petition to call for the entire records in Cr.No.38 of 2018 on the file of the 1st respondent Police and to quash the same.

2. The case of the petitioner is that the defacto complainant approached the petitioner for financial assistance

and initially the petitioner gave a sum of Rs.60 lakhs to the 2nd respondent and loans were advanced on the strength of written instruments of the 2nd respondent who had also executed a memorandum of deposit of title deeds and a power of attorney in favour of the 1st petitioner, authorizing him to deal with the property in the event of default. The 2nd respondent himself admitted in the complaint that he is due and liable to pay the petitioners a sum exceeding a crore of rupees and he promised to clear all the dues within 10 days. Though the petitioners waited for nearly four weeks, the defacto complainant failed to settle the dues and hence, they were constrained to sell the assets to liquidate the dues payable by the 2nd respondent. Aggrieved by the same, the defacto complainant has lodged a police complaint in Cr.No.38/2018 on 20.07.2018. Challenging the same, the present petition is filed.

3. The learned counsel appearing for the petitioner submitted that during the pendency of the FIR, the petitioners have filed a Suit in C.S.No.443 of 2018 for recovery of dues from the 2nd respondent and this Court had elaborately discussed the transactions in between the petitioner and the defacto complainant in the said suit, which is still pending. Similarly, the defacto complainant also filed a Suit in O.S.No.43 of 2020, on the file of the District Court, Ranipet, for declaration of title to the property. Since the issue raised in the complaint is the subject matter, pending before the competent civil forum, criminal proceedings launched by the 2nd respondent against the petitioner is not sustainable and hence prays for allowing of this petition.

4. The learned counsel appearing for the 2nd respondent submitted that without going into the merits of the case, this Court may permit the 2nd respondent to canvass all those points before the competent Civil Court, where the declaration Suit is pending.

5. The learned Government Advocate (Crl.Side) has no serious objection for permitting the parties to canvass all the points before the competent civil Court.

6. This Court has carefully considered the rival submissions and also perused the materials placed before it.

7. Considering the facts and circumstances, this Court is of the view that the issue that arises for consideration in the present case is purely civil in nature and the respective parties had already invoked the jurisdiction of the competent civil forum, wherein the Suits are pending. While the matter in issue is pending before the Civil Courts, initiating criminal prosecution against the petitioner is not sustainable.

Therefore, this Court is inclined to quash the FIR against the petitioners.

8. Accordingly, this Criminal Original Petition is allowed and thereby the complaint in FIR No.38/2018, is quashed. However, liberty is granted to the petitioner and the 2nd respondent herein to raise all the issues before the competent civil forum in O.S.No.43 of 2020, on the file of the District Court, Ranipet and the respective parties shall also cooperate with the trial and shall file the materials available with them at the time of hearing before the said Court and the trial court shall dispose of the suit as expeditiously as possible. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
District Crime Branch,
Vellore.
2. The Public Prosecutor,
High Court of Madras,
Chennai - 600 104.

Copy To:-

The District Judge,
Ranipet.

+1cc to Mr.V.Sekar, Advocate, S.R.No.49323
+1cc to Mr.Govind Chandrasekhar, Advocate, S.R.No.49119

CRL.O.P.NO.18884 OF 2018

KV(CO)
PBS/17/11/2021