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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.O.P.No.22510 of 2021
and
Cr1.M.P.No.12234 of 2021

N.Thamotharan

... Petitioner

Vs.

1. State of Tamil Nadu rep by its:
The Inspector of Police,
District Crime Branch,
Erode. Cr.No.1/2021.

2. E.Viswanathan

... Respondents

PRAYER: The Criminal Original Petition has been filed under Section 482 of Cr.P.C.to call for the records and quash the First Information report in Cr.No.1/2021 pending investigation on the first respondent herein in respect of this petitioner.

For petitioner : Mr.A.Thirumaran

For Respondent : Mr.E.Raj Thilak
No.1 Additional Public Prosecutor

ORDER

The petitioner Manager of Repco Home Finance Ltd.,who is the seventh accused in Crime No.1 of 2021 for offences under Sections 120 B, 420, 467, 468 & 471 IPC, has filed this quash petition.

2.The gist of the case is that the second respondent the Branch Manager, HDFC bank Ltd., lodged a complaint against one Jayaprakash and his wife Sridevi, who are the residents of No.5, Thogai Murugan Nagar, Nallakavundenpalayam, Gobichettipalayam, Erode District that they had availed loan on the property in



Survey Nos.127/2 and 127/4, in Thendral Nagar, Plot No.6 to an extent of 2334 sq ft. Lakkampatti Village, Gobichettipalayam, Erode District. This property was mortgaged with Repco Home Finance Ltd., and since the rate of interest is on higher side, they approached the defacto complainant to take over the loan. Thereafter, HDFC Bank issued a cheque for Rs.58,00,000/- by cheque No.795269 dated 30.11.2018 and on receipt of the cheque, A1 and A2 cancelled the loan of Repco Home Finance Ltd., and received the original documents but they did not hand over the same to HDFC Bank. Whenever the same was questioned, they were giving evasive answer. Finally, it came to know that the property has been transferred to the names of A3 to A6, this has been done in collusion with A7, who handed over the original documents to A1 & A2 instead of transmitting the same to the defacto complainant's bank. Hence, the case has been registered.

3.The contention of the learned counsel for the petitioner is that normally, for the loan, the defacto complaint would write to the other bank or financial institution, while taking over the already mortgaged loan, to ascertain the facts and also to hand over the documents. In this case, the petitioner had not given any NOC as alleged in the complaint. Further, no communication has been sent from the HDFC Bank. The petitioner received the Demand Draft and the loan has been discharged by the lonee viz. A1 & A2. Thereafter, on discharge of the loan, the petitioner had handed over the documents and he is not aware of the subsequent development in the property or the representations made by A1 & A2. Hence, for discharging his official finance, he had been falsely implicated in this case. The counsel for the petitioner further submits that the defacto complainant is a dubious person, his role is to be examined, which fact have been already informed to the respondent police, who had not taken any action.

4.The learned Additional Public Prosecutor appearing for the first respondent submits that the petitioner in collusion with A1 & A2, knowingly received the cheque of HDFC Bank, discharged the loan and handed over the original documents. Prior to which, he had given NOC for issuance of loan. Based on the NOC, the loan was processed by HDFC Bank. The petitioner in collusion with the other accused had acted in tandem and thereby, caused loss to the defacto complainant. Further, now the petitioner raised a point that, HDFC bank not writing to Repco Home Finance Ltd., is a disputed fact, which has to be investigated and decided later. If the petitioner has got any material in this regard, he should submit the same to the investigating agency and he strongly opposed.



5. Finding the petitioner's submission are factual in nature, which has to be decided later and not at this stage. Further, the case has been recently registered and the investigation is in progress. In view of the same, this Court is not inclined to entertain the same. Therefore, this criminal original petition stands dismissed. Consequently connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

sms

To

1. The Inspector of Police,
District Crime Branch,
Erode. Cr.No.1/2021.
2. The Public Prosecutor,
High Court, Madras.

+1cc to M/s.A.Thirumaran, Advocate, S.R.No.68951

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and
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AD (CO)
SU (12/01/2022)