



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	17.11.2021
PRONOUNCED ON	01.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

CRIMINAL REVISION CASE NO.923 OF 2017

Gayathri

.. Petitioner/
Complainant

Vs.

1.Selvaraj
2.J.Geetha

.. Respondents/
Accused

PRAYER:

This Criminal revision Petition filed under Section 397 and 401 of Cr.P.C., against the order passed by the learned Chief Judicial Magistrate, Erode in CMP.No.1013/2017 on 12.06.2017.

For Petitioner : Mr.S.Veeraraghavan

For Respondents : Mr.J.James

ORDER

This Criminal Revision Petition has been preferred to set aside the order of the learned Chief Judicial Magistrate, Erode, dated 12.06.2017 passed in C.M.P.No.1013/2016.

2. The petitioner has filed a petition before the learned Chief Judicial Magistrate Erode, under Sec.6 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 for restoration of possession of Rs.6,49,800/-and undated cheque of petitioner's brother Srinivasan drawn on Karur Vysa bank, Erode which was forcefully obtained by the respondent/Accused.

3. In the said petition it is alleged that the petitioner was doing garment business. The accused, who are the distant relatives of the petitioner used to visit her house and were in friendly terms. During such interactions, at the instance of the 2nd accused, the 1st petitioner got a loan of Rs.3,33,000/-



from the 2nd respondent/2nd accused and was paying it in short intervals with minimum interest. However, the 1st respondent grabbed a sum of Rs. 9,83,100/- by charging exorbitant interest. In due course the accused also obtained blank cheques from the petitioner and misused it subsequently.

4. The learned Chief Judicial Magistrate has dismissed the petition on the ground that the petitioner has not made out any prima facie case for taking the petition on file. Aggrieved over that the petitioner has filed the criminal revision petition to set aside the order.

5. Heard, Mr.S.Veeraraghavan, learned counsel for the petitioner and Mr.J.James, learned counsel for the respondent.

6. The very contention of the petitioner is that she had repaid the loan amount availed from the accused with exorbitant interest. Despite discharging the loan the respondent was holding the undated cheque of petitioner's brother Srinivasan drawn on Karur Vysa bank, Erode. In the discussion of the main order itself the learned Chief Judicial Magistrate observed that the petitioner had produced the bank statement to prove his contention of discharging the loan; however it has been concluded by the learned Chief Judicial Magistrate that there is no prima facie proof produced before the Court to take the petition on file.

7. The allegations made in the petition along with the bank statement are found to be sufficient to show prima facie grounds to take this case on file. It is not necessary for the petitioner to produce all other materials or proof to substantiate her contentions made in the complaint. The petitioner has knocked the door of the Court to avail the benefits of the Special legislation like Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003. It is alleged that the respondent had withheld the cheques which were not issued by the petitioner for legally enforceable debts. There is every possibility that the petitioner can be harassed by making use of those cheques. Further no money lender should do violent acts like seizing the properties of the debtors without any order of the Court.

8. The above Act comes to the rescue of the victims of loans on exorbitant interest and to get their unlawfully seized properties restored. In the absence of any motive to file the complaint against the respondent, it is not desirable to reject



these kinds of petitions at the very inception itself without giving any opportunity for the petitioner to substantiate her allegations. The dismissal order under Sec. 203 Cr.PC should be sparingly used only when the complaint does not disclose any material facts against the respondent. It is not necessary for the petitioner to substantiate her allegations at the stage of filing the complaint itself. So the seriousness of the allegations made by the petitioner coupled with the copies of the bank accounts statements furnished would show that there is every reason to presume prima facie case against the respondent.

9. The learned counsel for the petitioner invited the attention of this Court to the decision reported in AIR 1972 Supreme Court 1607 [Debendra Nath Bhattacharya & Ors vs State Of West Bengal & Anr] In the said judgment it is held as under:

"8. In the case before us, the learned Magistrate was in error in assuming that merely because the names of one or two former employees of the Company may be mentioned in the pay- sheets the whole prosecution case was actually demolished. Moreover, as the High Court had rightly pointed out, the complainant's actual evidence had fully supported and not contradicted any part of the complaint. No such absurdity was revealed by the complainant's evidence as to merit a forthright dismissal of the complaint under Section 203 Criminal Procedure Code. What the Magistrate had to determine at the stage of issue of process was not the correctness or the probability or improbability of individual items of evidence on disputable grounds, but the existence or otherwise of a prima facie, case on the assumption that what was stated could be true unless the prosecution allegations were so fantastic that they could not reasonably be held to be true."

10. In respect of the contention made at the stage of the issuing the process the Magistrate need not determine about the correctness or probability or improbability of the materials produced before it. In some serious cases the statement of the victim itself can serve as a prima facie material and it is not possible for the complainant to produce documents for each and every allegation at the time of filing the complaint itself. Taking into consideration the above said facts and the well - settled position of law, I feel that the order of the learned Chief Judicial Magistrate is liable to be set aside.



In the result this Criminal Revision Petition is allowed and the order of the learned Chief Judicial Magistrate, Erode, dated 12.06.2017 passed in C.M.P.No.1013/2017 is set aside. The learned Chief Judicial Magistrate is directed to take the complaint on file.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

jrs

To

The Chief Judicial Magistrate, Erode

Copy To

The Record Keeper, Criminal Section,
High Court, Madras.

+2ccs to Mr.S.Veeraraghavan, Advocate, S.R.No.62545

+1cc to Mr.J.James, Advocate, S.R.No.63650

Cr1.RC.No. 923 of 2017

AJS(CO)
PM/10/12/2021