BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 02.12.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
Crl.O.P.(MD)No.12631 of 2021
and
CRL.M.P.(MD)No.6434 of 2021

Vipin,
Branch Manager,
UCO Bank, Karungulam,
Thoothukudi District.

Now working at
UCO Bank,
ASD Puram,
Pollachi - 2. ... Petitioner / Sole Accused

Vs.

1. The Inspector of Police,
Seidunganallur police station,
Thoothukudi District.
(Crime No.64 of 2020) ... 1st Respondent / Complainant

2. Srirenga Natchiyar ... 2nd Respondent / Defacto Complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for the records from the learned Judicial Magistrate Court, Srivaikundam in C.C.No.113 of 2021 and quash the same as it has no prima facie case as against the petitioner.

For Petitioner : Mr.V.Kathirvelu, Senior Counsel, for Mr.K.Prabhu.

For R-1 : Mr.T.Senthil Kumar, Additional Public Prosecutor.

For R-2 : Ms.Srirenga Natchiyar, Party-in-Person.

ORDER

This criminal original petition has been filed for quashing the proceedings in C.C.No.113 of 2021 on the file of the Judicial Magistrate, Srivaikundam, Thoothukudi District.

2.The second respondent herein is the defacto complainant in Crime No.64 of 2020 registered on the file of Seidunganallur police station for the offences under Sections 418, 420, 466 and 467 of IPC.

3.The case of the defacto complainant is that the petitioner herein filed O.S.No.15 of 2017 on the file of the District Munsif Court, Srivakundam for recovering a sum of Rs.66,274/- from her with interest at the rate of 12% p.a. The said suit was filed on the strength of revival letter dated 05.01.2015 that is said to have been executed by the defacto complainant. The defacto complainant in her written statement filed before the civil Court contended that she never executed such a revival letter and that it was a rank forgery. The document was referred to the Regional Forensic Science Laboratory for opinion. The Deputy Director had given a report dated 19.06.2019 opining that the said document was not signed by the defacto complainant. Since Ex.A.7 was held to be disproved, the trial Court by judgment and decree dated 27.11.2019 dismissed the suit on the ground of limitation.

4.Thereafter, the defacto complainant sent a complaint dated 10.01.2020 to the Inspector General of Police, Tirunelveli Region, for prosecuting the petitioner herein. Initially CSR alone was issued. Thereafter, the defacto complainant took steps and only thereafter, the First Information Report came to be registered. The first respondent conducted investigation and filed final report before the Judicial Magistrate, Srivaikundam and cognizance of the offences was also taken. Summon was issued to the petitioner and to quash the proceedings, this criminal original petition has been filed.

5.The learned Senior counsel appearing for the petitioner reiterated all the contentions set out in the memorandum of grounds and contended that the impugned proceedings constitute a clear abuse of legal process and wanted the same to be quashed.

6.Per contra, the learned Additional Public Prosecutor appearing for the first respondent submitted that this Court while exercising jurisdiction under Section 482 of Cr.P.C. cannot go into factually contentious matters. The case on hand involves an allegation of forgery. Whether the petitioner committed the same or not has to be gone into during a regular trial and he called upon this Court to dismiss this criminal original petition.

7.The defacto complainant appeared in person before this Court through video conferencing and submitted that as on date, the finding of the civil Court is holding good. It is true that the bank had filed an appeal. But it is still pending at the stage of condonation of delay. Be that as it may, the petitioner can very well canvass all these contentions before the trial Court. She firmly stated that no case for quashing has been made out. The defacto complainant filed her written submissions.

8.I carefully considered the rival contentions and the went through the materials on record.

9.There is no dispute that the defacto complainant had availed a loan of Rs.50,000/- from the UCO Bank, Karungulam Branch in the year 2008. The husband of the defacto complainant had stood as guarantor. According to the bank, only a portion of the loan liability was cleared. The defacto complainant would state that she had paid a sum of Rs.38,000/- and that if the subsidy is also taken, the entire loan liability stood liquidated. In any event, the case on hand does not relate to the liability of the defacto complainant. This is because, the bank had already filed a civil suit and the same was also dismissed. Whether the defacto complainant had cleared the liability or not is subject to the appeal proceedings instituted by the bank. The bank had filed the said recovery suit by claiming that the defacto complainant had executed confirmation and revival letters. One such letter is dated 05.01.2015 which was marked as Ex.A.7 before the trial Court. If the defacto complainant had executed the said document, the suit would be in time. The defacto complainant had specifically taken a plea that Ex.A.7 is a rank forgery. Therefore, the said document was referred to the Regional Forensic Science Laboratory and the report dated 19.06.2019 states that the signature found in Ex.A.7 is not that of the defacto complainant. Thus, as on date, the finding of the civil Court is that the said revival letter is forgery.

10.Now the only question that arises for determination is whether the petitioner herein deserves to be prosecuted. The recovery suit was filed not by the petitioner in his individual capacity but only on behalf of the UCO Bank, Karungulam Branch. The petitioner has no personal element at all. There is absolutely nothing on record to show that the document in question was actually fabricated or prepared by the petitioner. Merely because the petitioner was the Branch Manager during the relevant time and the case was filed in his name, he cannot be fastened with penal liability. From this single circumstance, one cannot straightaway come to the conclusion that the petitioner had fabricated the said document. The plaintiff bank was not shown as an accused. There is no material to show that the petitioner played a part in the fabrication of the document. That apart, the judgment of the trial court has been put to challenge by the bank before the appellate court. The defacto complainant admitted having borrowed Rs.50,000/-. Even according to her, Rs.38,000/- was repaid. The official of the creditor bank is also being prosecuted. This is a case of zero evidence against the petitioner. The police have not obtained statement from any bank official that the petitioner was responsible for fabricating the revival letter. There is no statement recorded under Section 161 of Cr.pc that the borrower never came to the bank for signing the revival letter. Merely because the renewal letter filed along with the plaint was found to be not containing the signature of the defacto complainant, one cannot come to the conclusion that the petitioner was responsible for the fabrication. Continuance of the impugned prosecution is an abuse of legal process. Therefore, the impugned proceedings are quashed. This criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (As)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

PMU

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The Judicial Magistrate,
   Srivaikundam.

2. The Inspector of Police,
   Seidunganallur police station,
   Thoothukudi District.

3. The Additional Public Prosecutor,
   Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.K.PRABHU, Advocate (SR-37190[F] dated 03/12/2021)

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MGJ(24.02.2022) 4P 5C