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CRL.O.P.No.2590 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.04.2022

Pronounced on : 13.06.2022

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P.No.2590 of 2019

and

CrI.M.P.No.1673 of 2019

Solaiappan.S

Retd Sr. Manager

... Petitioner

Vs.

M.Vanitha

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code to call for the records and quash the proceedings in C.C.No.143 of 2016 pending on the file of the learned Judicial Magistrate – I, Gobichettipalayam, Erode.

For Petitioner : Mr.R.Sampath Kumar

For Respondent : Mr.Ranjith Kumar

ORDER

This Criminal Original Petition had been filed to quash the proceedings in C.C.No.143 of 2016 pending on the file of the learned



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Judicial Magistrate – I, Gobichettipalayam, Erode.

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2. The learned Counsel for the Petitioner invited the attention of this Court to the complaint. The sale of the property was on 03.10.2009 and it was subsequent to the transfer of the Petitioner from the Branch where the defacto complainant/Respondent's husband had obtained loan. The Petitioner herein retired from the Bank on 18.06.2009 and the complaint was lodged by the Respondent in the year 2016 after 7 years. After the retirement of the Petitioner, the second Respondent had filed the Suit in O.S.No.62 of 2010 on the file of the learned District Judge. The Suit was decreed on 10.11.2014. In the Judgment of the Civil Court, it was made clear by the learned trial Judge that even though the Defendant in the Suit filed written statement, she did not appear before the Court to let in evidence.

2.1. The learned Counsel for the Petitioner also referred to the document under Ex.A-15.

2.2. It is the submission of the learned Counsel for the Petitioner



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that the private complaint was not filed by the Respondent/Complainant viz., Vanitha. The documents filed before the Bank, was relied by the Bank before the Civil Court was signed by the Respondent herein in English whereas the complaint filed before the learned Judicial Magistrate was signed in Tamil. The private complaint is filed by the Respondent/Complainant only to harass the Branch Manager/Petitioner herein and there is no affidavit filed by her. In the Civil Suit filed by the Bank against the Respondent herein for the outstanding loan, nothing was suppressed to attract the criminal offence alleged against the Bank Officials. All the documents relied on by the Bank in the Civil Suit, was signed by the Defendant in the Suit/Complainant in the criminal complaint in English. The Complainant in the criminal Court as Defendant in the Civil Suit filed by the Bank remained ex-parte in the Suit. Even after suffering a decree against the Respondent in the Civil Court, the Respondent herein as Defendant in the Civil Suit had not agitated her valuable right by way of appeal. Therefore, this criminal complaint is filed only to harass the Bank Officials preventing them from their lawful duty in recovering the dues from the person who availed loan/the husband of the Respondent herein. After the decree obtained by



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the Bank, the Bank had filed the Execution Petition where also the Respondent herein/Complainant is a party in the Execution proceedings.

3. The learned Counsel for the Respondent/Complainant submitted his arguments. As per his submissions, the husband of the Complainant viz., Mayilsamy died on 12.07.2007 and his death certificate is enclosed in the typed sets of papers filed by the Respondent/Complainant and the valuation Report is of the year 2008, in the name of Mayilsamy. Form – 29 of the Bank was filled up without impleading his legal heirs. The Petitioner had not produced any document showing that the Petitioner retired on such and such date. The Respondent/Complainant had appeared before the learned Judicial Magistrate with sworn statement when she affixed her signature before the learned Judicial Magistrate cannot be disputed by the Petitioner now. What are all argued on behalf of the Petitioner are to be considered before the learned Judicial Magistrate only during trial.

4. On consideration of the rival submission, it is found that the Respondent had not agitated the valuable right available to her even



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though she was served with summons from the Civil Court. She did not contest the case even though she filed written statement. Therefore, the learned trial Judge while disposing the Suit in O.S.No.62 of 2010 filed by the Bank, had in her Judgment observed that the Defendant in the Suit even though filed written statement did not contest the Suit filed by the Bank. Therefore, this Court as well as trial Court can draw adverse inference against the conduct of the Respondent/Complainant herein who was the Defendant in the Civil Suit filed by the erstwhile State Bank of Mysore subsequently merged with State Bank of India.

The submission of the learned Counsel for the Petitioner that after 7 years from the date of retirement of the Petitioner, this criminal complaint had been lodged only with an ulterior motive to harass the Petitioner is found acceptable in the light of the circumstances pointed out by the learned Counsel for the Petitioner that when the husband of the Respondent viz., Mayilsamy had obtained loan and the loan had not been recovered, the Bank had taken the steps to recover the loan by filing the Suit before the Civil Court. In the Civil Court under the principle of fairness, equity and good conscience, when the summons



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had been served as per the Code of Civil Procedure regarding the claim of the Bank, the legal heirs of Mayilsamy, on such summons having entered appearance through lawyers and filed written statement disputing the claim of the Bank. When the trial commenced, the Defendant had not contested the claim of the Bank during trial. In such circumstances, observation by the learned trial Judge in the Civil Suit that even though the Defendant had entered appearance and filed written statement, the Defendant remained ex-parte, the same gives presumption to the Court that the contents of the written statement had been abandoned by the Defendants. The claim of the Respondents herein as Plaintiff in the Civil Suit, erstwhile the State Bank of Mysore and the present State Bank of India regarding the outstanding dues from the deceased Mayilsamy which can be recovered from his estate as well as from his legal heirs is true and bonafide. Therefore, the Defendant in the Suit filed by the erstwhile State Bank of Mysore and the present State Bank of India is having claim in which the legal heirs of Mayilsamy cannot succeed. That is why, the Suit had been decreed against them.



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4.2. Added to that, legal heirs of Mayilsamy had suffered decree from the Civil Court regarding the claim of the erstwhile State Bank of Mysore and the present State Bank of India had not preferred any appeal within the period of limitation before the Court concerned seeking to set aside the decree against the Defendant in the Suit. Under those circumstances, the argument of the learned Counsel for the Petitioner/Accused that this criminal complaint filed with an ulterior motive had to be viewed seriously.

4.3. For the legal action by the Bank in recovering the dues from the defaulters of the Bank, even after the death of the defaulters of the Bank either from the legal heirs or from the estate of defaulters or beneficiaries cannot be considered as an illegal act or fraud played on the Respondent herein.

4.4. If the Respondent/Complainant had valuable right to dispute the claim of the Bank, this Respondent ought to have agitated her right during the trial in the Civil Suit before the Civil Court. She had not done so. Therefore, from the conduct of the Respondent/Complainant, it can



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be presumed that she did not have any valuable defence to succeed in the Civil Suit.

4.5. After remaining ex-parte in the trial proceedings in the civil Suit filed by the Bank, the Defendant before the trial Court filing a criminal complaint that the Officials of the Bank played fraud on the deceased Mayilsamy and his legal heirs cannot at all be considered by this Court in the light of the Civil Court decree. Therefore, the contention of the learned Counsel for the Petitioner that the criminal complaint is filed in the name of Vanitha by some other persons and the signature of the Vanitha in the criminal complaint is in Tamil and the Bank documents executed by the Vanitha is in English. She had filed written statement before the Civil Court, after receipt of summons. Therefore, not contesting the Suit and subsequently filing the criminal complaint against the Bank Officials as though they had played fraud on the deceased Mayilsamy and his legal heirs cannot at all be considered, in the light of the proceedings in the Civil Suit where the summons were issued and the Respondent as Defendant had filed the written statement, but remained ex-parte. Those circumstances gives presumption to this Court regarding



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the conduct of the Defendant before the Civil Court, the Respondent in this Court that as pointed out by the learned Counsel for the Petitioner is nothing but only to harass the Bank Officials for doing their lawful work in recovering the dues to face criminal case for their legal action. Therefore, the Court has to necessarily draw adverse inference from the circumstances under Section 114 of Indian Evidence Act. Also the Court can draw presumption regarding the lawful act done by the Public Officials, Bank Officials who had done their lawful duty in recovering the dues, outstanding from the beneficiary, who subsequently was a defaulter, after availing loan. Therefore, prior to filing of the Suit, there had been notice, even after filing of the Suit, summons were served on the legal heirs of the deceased. What had been agitated in the criminal complaint ought to have been raised when summons were received by the legal heirs of Mayilsamy and Suit ought to have been solely contested thereby letting in evidence on behalf of the Defendant in the Suit. So that on appreciation of the evidence, the Civil Court could have accepted the valuable defence of the Defendant/legal heirs of Mayilsamy. That was not done by the Respondent herein as Defendant in the Suit. Therefore, it is to be treated only as harassing the Bank Officials for doing their



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lawful work in recovering the dues from the defaulters which a Court either Civil Court or Criminal Court cannot accept in the facts and circumstances as is available before the Court. Therefore, as rightly pointed out by the learned Counsel for the Petitioner/Accused it attracts the ratio laid down by the Hon'ble Supreme Court reported in **1992 Supp (1) SCC 335:1992 SCC (cri) 426** in the case of **State of Haryana Vs. Bhajanlal** where the extraordinary power exercised by the High Courts shall be used sparingly when there are materials available before the High Court that the criminal case is lodged to cause harassment to the Petitioner or it is an abuse of process of Court.

4.6. In the facts and circumstances of this case it is clear case of abuse of process of Court to cause harassment to the Bank Officials who had discharged their duty in recovering the dues from the defaulters. In the light of the Civil Suit filed by the Bank having been decreed particularly, the Respondent herein as Defendant in the Civil Suit having not contested the Civil Suit, this criminal complaint lodged by the Respondent/Complainant had to be quashed under Section 482 of Cr.P.C.,



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In the result, **this Criminal Original Petition is allowed.**

The criminal complaint pending on the file of the learned Judicial Magistrate – I, Gobichettipalayam, Erode in C.C.No. 143 of 2016 is quashed. Consequently, connected Miscellaneous Petition is closed.

13.06.2022

dh

To

1. The Judicial Magistrate – I,
Gobichettipalayam, Erode.

2. The Public Prosecutor
High Court of Madras
Chennai 600 104.

SATHI KUMAR SUKUMARA KURUP, J.



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SATHI KUMAR SUKUMARA KURUP, J.,

Today, the above Criminal Miscellaneous Petition is posted under the caption "For Being Mentioned" at the instance of the learned Counsel for the Respondent.

2.Learned Counsel for the Respondent/Complainant submitted that CrI.O.P.No.2590 of 2019 was filed by the retired Senior Manager seeking to quash the complaint in C.C.No.143 of 2016 pending on the file of the learned Judicial Magistrate-I, Gobichettipalayam, Erode District.

3.The learned Counsel for the Respondent/Complainant stated that the complaint was filed against five persons. The Petitioner herein was arrayed as A-1 and he is the sole Petitioner in the Petition in CrI.O.P.No.2590 of 2019. Therefore, the criminal complaint in C.C.No.143 of 2016 pending on the file of the learned Judicial Magistrate-I, Gobichettipalayam, should be quashed only against this Petitioner.

4.This Court vide order dated 13.06.2022 passed the following



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order:
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“In the result, this Criminal Original Petition is allowed.

The criminal complaint pending on the file of the learned Judicial Magistrate-I, Gobichettipalayam, Erode District, in C.C.No.143 of 2016 is quashed. Consequently, connected Miscellaneous Petition is closed.”

5. Considering the submission of the learned Counsel for the Respondent, it is clarified that the complaint in C.C.No.143 of 2016 on the file of the learned Judicial Magistrate No.I, Gobichettipalayam, Erode is quashed only in respect of the Petitioner in Crl.O.P.No.2590 of 2019. Therefore, the order dated 13.06.2022 should be read as follows:

“In the result, this Criminal Original Petition is allowed.

The criminal complaint pending on the file of the learned Judicial Magistrate-I, Gobichettipalayam, Erode District, in C.C.No.143 of 2016 is quashed as against the Petitioner/A1, namely, S.Solaiappan only. The learned Judicial Magistrate-I, Gobichettipalayam, Erode District, is directed to proceed with the trial in C.C.No.143 of 2016 against the other accused and dispose of the same as per



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law.”

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5.Registry is directed to carry out necessary corrections and issue fresh order copy.

30.06.2023

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SATHI KUMAR SUKUMARA KURUP, J.,

cda

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