IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2022

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.NO.6118 OF 2017
AND
CRL.M.P.NOS.4552 & 4553 OF 2017

S.Mohan Kumar
...Petitioner/Accused 1

Versus

1.State rep by.
The Inspector of Police
Central Crime Branch,
Egmore, Chennai-600 008

2.T.S.Sundaravadivelu
(R2 impleaded as per order in
Crl.M.P.No.13452 of 2021 in
Crl.O.P.No.6118 of 2017 dated
14.12.2021)
...Respondents/Complainants

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in the Charge sheet in C.C.No.1616 of 2015 on the file of Learned Chief Metropolitan Magistrate, Egmore and quash the same.

For Petitioner	:	Mrs.A.L.Ganthimathi
For Respondents	:	Mr.S.Vinoth Kumar for R1 Government Advocate(Crl.side)

O R D E R

This Criminal Original Petition has been filed to call for the records and quash the proceedings in the Charge sheet in C.C.No.1616 of 2015 on the file of Learned Chief Metropolitan Magistrate, Egmore for the offence under Sections 406, 420 of IPC and Sections 3 and 4 of Tamilnadu Prohibition of Charging Exorbitant Interest Act 2003 r/w 34 of the IPC were slapped against the petitioner.

2. The crux of the allegation against the petitioner is that the defacto complainant has borrowed a sum of Rs.1,20,00,000/- as loan from the petitioner/A1 in terms of Rs.70 lakhs repayable at Rs.3 lakhs principal and Rs.2.1 lakhs for a period of 24 months; Rs.50 lakhs of which Rs.15 lakhs was deducted towards interest and Rs.35 lakhs was disbursed to the defacto complainant on condition that it should be repaid in 10 installments of Rs.5 lakhs per month. Besides, the defacto complainant has also executed a Power of Attorney in respect of 9 acres and 15 cents (915 cents) of land in favour of A2, who is a Mediator between the petitioner and the defacto complainant. The defacto complainant has handed over the promissory notes, cheques and blank stamp papers to the petitioner. Thereafter, the defacto complainant has paid the loan amounts in three instalments and he has not paid the remaining amount. In the meanwhile, income tax raid was conducted in the petitioner/A1 house and the defacto complainant was also summoned and examined, in which, the defacto complainant has admitted that he has to still pay a sum of Rs.95,00,000/- to the petitioner. However, on verification of the accounts, it is his contention that he is liable to pay less than Rs.95,00,000/- as per the Tamilnadu Prohibition of Charging Exorbitant Interest Act 2003. Hence, the petitioner/A1 executed the documents on the basis of Power of Attorney. Thereby, the charge under Sections 406, 420 of IPC and Sections 3 and 4 of Tamilnadu Prohibition of Charging Exorbitant Interest Act 2003 r/w 34 of the IPC were slapped against the petitioner.

3. The learned counsel for the petitioner submitted that the defacto complaint himself admitted the fact that he has executed several documents including Power of Attorney for the money payable to the accused. Therefore, merely because the documents were executed on the basis of Power of Attorney, the offence under Section 420 and 406 I.P.C would not attract. Similarly, in this case, the loan has been advanced on the basis of the Negotiable Instruments Act, 1991 and Tamilnadu Prohibition of Charging Exorbitant Interest Act 2003 will not apply. He further submitted that criminal colour has been given to civil dispute. Hence, the prosecution is nothing but abuse of process of law.

4. The learned Government Advocate(Crl.Side) submitted that the witnesses have been examined and higher rate of interest has been collected. The crux of the allegation in the final report itself shows that the money has been advanced on the basis of Negotiable Instrument act. It is relevant to note that the defacto complainant himself admitted before the Income Tax Authorities that he has to pay a sum of Rs.95,00,000/- But, as per the provisions of Tamilnadu Prohibition of Charging

Exorbitant Interest Act 2003, he is liable to pay less than the sum of Rs.95,00,000/-.

5. It is relevant to note that, as per Tamil Nadu Money Lenders Act, 1957, “loan” means an advance, whether of money or in kind at interest, and includes any transaction which the Court finds in substance to amount to such an advance, but does not include an Advance made on the basis of a negotiable instrument as defined in the Negotiable instruments Act, 1881, exceeding Rupees ten thousand. Therefore, when the amount in the instant case has been advanced on the basis of the Negotiable Instruments Act, the question of applying Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, does not arise at all. To apply the provisions of Section 3 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, the prosecution should show that the accused has collected exorbitant interest by way of daily interest, hourly interest, kandhu vatti, meter vatti, thundel, etc. as defined under Section 2 of the said Act. It is not the case of the de facto complainant and others that the petitioner had, at any time, collected daily interest, hourly interest, kandhu vatti, meter vatti, thundel, etc. Therefore, once an advance has been obtained on the basis of the Negotiable Instruments Act, even assuming that the interest rate was more than the Money Lenders Act, as the Money Lenders Act itself is not applicable to the negotiable instruments for the amount exceeding Rs.10,000/-, the rate of interest which is contractual in nature, cannot be construed as an offence under Section 3 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003. Further allegation with regard to threat, as the same is made with motive, prosecution can be quashed.

6. In such view of the matter, when the loan amount is advanced on the basis of Negotiable Instrument Act, this Court is of the view that the invoking the provisions in Tamilnadu Prohibition of Charging Exorbitant Interest Act 2003 for the loan amount of more than Rs.10,000/- does not arise at all. Further, merely the documents have been registered on the basis of the Power of Attorney executed by the defacto complainant, such act would not constitute an offence of cheating. When any document is executed as long as Power was in force, the act of cheating will not be attracted. If at all, the defacto complainant assails the documents, he has to take steps only before the Civil Court. Therefore, merely because of higher contractual rate of interest at the time of claim between the parties, which was agreed by the defacto complainant, such act will not fall within the ambit of Tamilnadu Prohibition of Charging Exorbitant Interest Act, 2003.

7. In view of the above, the entire prosecution is nothing but abuse of process of law. Hence, the prosecution against the petitioner is quashed. Accordingly, this Criminal Original Petition is Allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

msv/nr

To

1. The Chief Metropolitan Magistrate, Egmore.

2. The Inspector of Police
   Central Crime Branch,
   Egmore, Chennai-600 008

3. The Public Prosecutor
   High Court, Madras.

+1cc to M/s.A.L.Ganthimathi, Advocate, S.R.No.6166

Crl.O.P. No.6118 of 2017
and Crl.M.P.Nos.4552 & 4553 of 2017

MG(CO)
RLP(18/02/2022)