IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Orders Reserved On 18.04.2022	Orders Pronounced On 17.06.2022

Crl.O.P.No.21137 of 2017
and
Crl.MP.No.12481 of 2017

Kamaraj ... Petitioner

Vs.

1. The Inspector of Police,
   EDF-II Team-II,
   Central Crime Branch,
   Veppery, Chennai.

2. Dr.Gayathri Devi ... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the proceedings in Crime No.66 of 2017 on the file of the respondent police and quash the same.

For Petitioner : Mr.S.Haja Mohideen Gisthi

For First Respondent : Mr.A.Damodaran
Additional Public Prosecutor

For Second Respondent : Mr.Vikram Ramakrishnan

ORDER

The petitioner/accused in Crime No.66 of 2017 for the offence under Sections 420, 465, 467, 468, 471, 342 and 120B IPC filed this quash petition.

2.The gist of the complaint is that the defacto complainant is the wife of Dr.Sudheer, her husband constructed a clinic and he needed some financial help. Hence he approached the petitioner, who is a moneylender residing at Purasaiwakkam for a loan of Rs.20 lakhs. The petitioner demanded exorbitant interest @ 5% per month and since the defacto complainant's husband was in urgent need of money, he was forced to accept the same. The interest for the loan was regularly paid by her husband, the petitioner demanded more money and he showed the interest with falsified accounts. Thereafter, the defacto complainant's husband was forced to give blank signed cheques and promissory notes on the promise that he will keep the same as security and will not be used. The defacto complainant's husband was under the clutches of the petitioner, hence he handed over two signed blank cheques bearing Nos.981012 and 981014 drawn on Indian Bank, East R.A.Puram Branch along with blank but signed promissory note. The petitioner threatened and pressurized the defacto complainant's husband to pay exorbitant interest. Hence, unable to bear any further the defacto complainant's husband lodged a complaint with the Inspector of Police, Teynampet Police Station on 12.05.2016. On coming to know about the complaint, the petitioner had enraged and with oblique motive conspired with one Sarfaraz Ahamed and Piyush Mishra used the blank signed cheques and promissory notes. The petitioner along with these two persons conspired and thereafter using these Negotiable Instruments filed a false complaint with the Aliganj Police Station, Lucknow and managed to get a warrant through Court at Lucknow. The defacto complainant's husband gave stop payment on 30.04.2016 and 02.03.2017 respectively. Pursuant to the warrant, the defacto complainant's husband was arrested and remanded to custody. The Uttar Prades Police took three days transit period for production of defacto complainant's husband in Lucknow Court. He was taken by air by the Lucknow Police, detained under the custody of Sarfaraz Ahamed and Piyush Mishra illegally without remanding him within the permitted lawful time and thus, kept the defacto complainant's husband under illegal custody and caused harassment. Further, they made frequent calls to the defacto complainant's Mobile No.9382156070, defacto complainant's son Mobile No.9445505499 and to her brother's Mobile No.9908811711 from Mobile No.7081064779 and threatened them to settle the amount immediately, otherwise they would finish him. When the defacto complainant's brother went to Lucknow, he came to know that apart from two cheques, receipt was also forged with the signature of the defacto complainant's husband. The petitioner was the instrumental man behind handing over the promissory note and cheques to Sarfaraz Ahamed and Piyush Mishra, who created a forged receipt using these documents and managed to lodge a false complaint against her husband.

3.The contention of the learned counsel for the petitioner is that the petitioner sent a legal notice dated 09.06.2016 to

Dr.Sudheer stating that the defacto complainant's husband came in contact to the petitioner through one Dr.Jithendra Singh. The defacto complainant's husband claim that he is a Government Doctor, he was inspecting Private Colleges for approval, he could get medical seat at concessional rate to the niece of the petitioner, thereafter he did not progress and their relationship continued. The defacto complainant's husband sought for loan for opening a Clinic for the defacto complainant who is also a Doctor. From 20.12.2013 to 05.02.2016, a total sum of Rs.59 lakhs were transferred, it was a commercial loan and the interest was agreed at 24% per annum. Out of the aforesaid amount, Rs.29 lakhs was repaid on different dates through Bank, thereafter from April 2016 neither the balance amount of Rs.30 lakhs nor the interest were paid, for which a promissory note dated 05.05.2016 was executed and two cheques bearing Nos.029345 and 029347 drawn on Axis Bank, Adyar Branch was issued in favour of the petitioner each for a sum of Rs.15 lakhs. When the petitioner was insisting Dr.Sudheer for repayment, he lodged a false complaint before Teynampet Police Station on 12.05.2016. Hence, a legal notice was sent. In reply, the defacto complainant's husband on 24.06.2016 admitted the money transactions and limited it only to Rs.20 lakhs and with regard to other transactions, he denied the same. Further, the defacto complainant's husband made a claim as though the petitioner received Rs.57,87,000/- for Rs.20 lakhs with exorbitant interest. In the reply, the defacto complainant's husband further projected as though two Axis Bank cheques were given in the year 2011 and admits that it is signed but unfilled. Further claimed that the signed promissory note and cheques were not issued in the year 2016. He denied that the loan was a commercial transaction and the interest charged @ 24% as being exorbitant. With regard to the transfer of Rs.59 lakhs, there is no proper reply.

4.He further submitted that the petitioner thereafter filed an application under the RTI Act to the Inspector of Police, Teynampet Police Station and found that for the complaint lodged by the defacto complainant's husband, C.S.R.No.302 of 2016 was assigned and the same was closed on 09.11.2016 finding that the case is civil in nature. Further, the petitioner filed a civil suit in C.S.No.940 of 2016 before this Court, in which the transfer of Rs.59 lakhs on various dates to the defacto complainant's husband, particulars and other things were narrated. The prayer in the civil suit is for seeking payment of Rs.30 lakhs with 12% interest. To evade and avoid the payment, the defacto complainant's husband unable to give any proper accounts for Rs.59 lakhs repayment had projected a case as though only Rs.20 lakhs was received, for which he repaid a sum of Rs.57,87,000/- which cannot be comprehended in any manner. He further submitted that the Teynampet Police Station closed the case. Thereafter, the defacto complainant's husband managed to file a petition under Section 156(3) Cr.P.C., got the complaint registered on 08.03.2017 and the said complaint is also on the same facts. He further submitted that the defacto complainant's husband admit the receipt of Rs.20 lakhs as loan and only the quantum is disputed. In such event, the offence of cheating would not arise. Further, the defacto complainant's husband was arrested on the orders of the competent Criminal Court at Lucknow, the Lucknow Police came to Chennai arrested the defacto complainant's husband, produced him before the concerned Metropolitan Magistrate Court, after obtaining the transit warrant, he was taken to Lucknow and remanded there. In such circumstances, making allegations as though forged documents were created against her husband is not sustainable. To escape from the clutches of law and also for not making repayment for the loan amount, false complaint was lodged. He further submitted that the defacto complainant herein filed a complaint before the Hazratganj Police Station, Lucknow and a case in Crime No.223 of 2017 under Section 420, 468, 385 IPC was filed against Sarfaraz Ahamed and others. The Lucknow Police closed the case, thereafter the defacto complainant filed a protest petition and hence, the closure report was rejected. He further fairly submitted that the case in Crime No.391 of 2016 registered against the defacto complainant's husband at the instance of Sarfaraz Ahamed under Sections 406 and 420 IPC was closed, against which protest petition was filed and the closure report was rejected directing the complainant therein to record the statement under Section 200 Cr.P.C.

5.In support of his contention, the learned counsel for the petitioner produced a typed set of papers enlisting the legal notice sent by the petitioner to the defacto complainant's husband, reply from him, RTI application, the reply received from the Teynampet Police Station, copy of the plaint suit filed by the petitioner in C.S.No.940 of 2016, and the copy of the letter issued by the Indian Bank. In view of the same, for the civil transaction to spike venom a false complaint was lodged. Further, looking the case from any angle no case is made out and hence, prayed for quashing the same. The petitioner further submitted that already the defacto complainant lodged a complaint on the similar facts before the Teynampet Police Station and the present complaint before the CCB is nothing but a second FIR. Further, from the year 2017 the case is kept pending as the stage of investigation and the domicile sword is hanging against the petitioner for no reason. Hence, he relied upon the decision of the Apex Court in the case of “Common Cause” A Registered Society through its Director vs. Union of India and others reported in [1996] 4 SCC 33 and “Common Cause” A Registered Society through its Director vs. Union of India and others reported in [1996] 6 SCC 775. Further, for the proposition that the civil suit is pending and for the same transaction criminal case cannot be proceeded with, he relied upon the decision in the case of Babu Venkatesh and others vs. State of Karnataka and another reported in 2022 Livelaw [SC] 181. For the proposition that second FIR is not maintainable for the same cause of action, he relied upon the decision in the case of Vijay Kumar Ghai and others vs. The State of West Bengal and others reported in 2022 Livelaw [SC] 305.

6.The learned counsel for the second respondent/defacto complainant filed his counter and submitted that the allegation in the FIR clearly disclose the entrustment of property. The petitioner/accused obtained blank cheques and blank promissory note under the false pretext that the same would be retained as security. The blank cheques were not given voluntarily and they were forged instruments. Further the petitioner using his associates, namely, Sarfaraz Ahamed and Piyush Mishra had created a forged receipt and using the same lodged a false complaint and obtained a warrant from the Court in Lucknow. The Lucknow Police travelled to Chennai, arrested the defacto complainant's husband while he was back from his duty and he was taken to Magistrate for obtaining transit warrant for three days. But instead of producing the defacto complainant's husband before the Lucknow Court immediately, he was detained in Lucknow wherein the said Sarfaraz Ahamed exerted pressure on the defacto complainant's husband to settle the amount immediately. The inhuman manner in which the defacto complainant's husband was arrested created agitation among the Doctors of the Madras Medical College who held a protest and demonstration. Thereafter, the defacto complainant's husband was granted bail by the Lucknow Court. The petitioner using the FIR and detention of the defacto complainant's husband had informed the Medical College authorities and charges under the Government Service Rules were created, he was not allowed to retire, his terminal benefits were withheld and thereafter, he had to approach this Court by filing a Mandamus in W.P.No.24909 of 2021 and this Court by order dated 05.01.2022 recorded that the FIR filed against the defacto complainant's husband by the UP Police in Crime No.391 of 2016 was closed as mistake of fact. It is further submitted that the defacto complainant lodged a complaint against Sarfaraz Ahamed and Piyush Mishra before the Hazaratganj Police Sttion, Lucknow, case was later closed, against which the defacto complainant filed a protest petition, by order dated 12.03.2018 closure report was set aside and directed the concerned Police to conduct further investigation.

7.He further submitted that the defacto complainant or her husband never met Sarfaraz Ahamed and Piyush Mishra and had any transaction. The cheques and promissory note which was received as security by the petitioner were handed over and they managed to lodge a complaint against the defacto complainant's husband in a far off place in Lucknow, obtained a warrant, thereafter forcibly taken him to Lucknow, kept under illegal custody, forced him to pay exorbitant interest and settle the issue. Several phone calls were received by the defacto complainant, her son and her brother, those particulars were handed to the respondent police. He further submitted that this petition is filed to strangulate the investigation. Now the Lucknow Police closed the case against the defacto complainant's husband. Further the investigation cannot be throttled and terminated in the middle and the respondent police ought to be allowed to conduct investigation and to file a final report in this case. In support of his contentions, he relied upon the decision in the case of State of Haryana and others vs. Bhajan Lal and others reported in 1992 Suppl.(1) SCC 335, wherein the Apex Court given a note of caution in quashing the criminal proceeding and further, the Apex Court had laid down the balanced guidelines but the case of the petitioner would not fall in any of the guidelines. He further relied on the decision in the case of Rajesh Bajaj vs. State. NCT fo Delhi and others reported in [1999] 3 SCC 259 for the proposition that whether commercial transaction or money transaction by the accused is a matter to be decided during trial. He would also relied upon the decision in the case of M.Krishnan vs. Vijay Singh and another reported in [2001] 8 SCC 645 for the proposition that where factual foundations for the offence have been laid down in the complaint, the High Court should not hasten to quash criminal proceedings merely on the premise that one or two ingredients were not stated.

8.The learned Additional Public Prosecutor appearing for the first respondent filed his counter and made his submissions. The relevant paragraphs in the counter affidavit reads as follows:

> "6.It is submitted that on 08.03.2017, the defacto complainant lodged a complaint before the Commissioner of Police. Tr.D.Arockiya Ravindran, Inspector of police, received the complaint and registered a case in CCB Cr.No:66/2017 u/s 420, 465, 467, 468, 471, 342 & 120 (b) IPC on 8.3 2017 at 16.00hrs and took up the case for investigation. During the course of investigation, then Inspector of police enquired the defacto complainant and other witnesses and recorded their statements and collected the documents from banks and airlines.
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> 7.It is submitted that during the course of investigation, the then Inspector of police came to know that the petitioner/ accused was arrested in E3-Teynampet PS Cr.No:652/2017 and remanded in

Central Prison, Puzhal. On 13.03.2017 at 13.20 hrs then Inspector of police formally arrested the Petitioner/accused in Central Prison, Puzhal and he was produced before the CCB-CBCID Special Metropolitan. Magistrate court, Allikulam and sent to Judicial Custody. Subsequently, he was detained under the Goonda's Act on 23.03.2017 vide Ref No: 72/BCDFGISSSV/2017.

8.It is submitted that the averments made in the complaint and the consequent FIR, which is registered against the petitioner/ accused makes out a prima facie case against the petitioner/ accused. In the instant case, the documents collected during the course of investigation revealed that the cheques Nos.981012 and 981014 drawn on Indian Bank, and promissory Notes issued by Dr.Sudheer for security purposes were misused by converting it to their own use with the Criminal intent and active connivance of the accused with Sarfaraz Ahamed and Piyush Mishra. It is revealed that the stop payment requests were made on 30.04.2016 and 02.03.2017 respectively. A receipt was prepared by tampering and forged by the accused. It is revealed that Dr.Sudheer was arrested by UP Police officials Mr.Haridas Chaurasin and Mr.Narendra Kumar Mishra on 24.02.2017 in relation to Cr.No.391/2016 and remanded to custody before Hon'ble XVIII Metropolitan Magistrate, Saidapet, Chennai and took three days transit warrant for the production of Dr.Sudheer in the Lucknow court. It is revealed from the Air Tickets that on 25.02.2017 at 7.30 am itself, they have reached Lucknow, but Dr.sudheer was remanded for judicial custody only on 26.02.2017 at 5.30 p.m. During the illegal custody the defacto complainant received calls from Mobile No.7081064779. Further defacto complainant's brother and son also received calls from the above said number wherein threats were made to all three of them to part with money or to face grave consequences. Further, it is revealed from the statement under 161 CRPC, one Mr.Pradeep kumar has stated that his mobile number 9884852852 has been misused by some strangers for booking 4 air tickets from Chennai to Delhi on 24.02.2017 and Delhi to Lucknow on 25.02.2017. He came to know about the booking tickets through SMS received in his mobile number. Further, it is revealed from the Air Tickets that the accused has also travelled on 26.02.2017 from Chennai to

Lucknow in Indigo Airlines Flight being Flight No.6E244 AND 6E 528 at 16.50 Hrs and returned back on 04.03.2017 in Flight No.6E 226 AND 6E 729 at 14.35 Hrs.

9.It is submitted that the compliant of the defacto complainant discloses commission of cognizable offences of serious nature and the investigation has been completed. The existence of civil case is no bar on the investigation of a criminal case since the ingredients and acts constituting Criminal offences in this case are clearly made out.”

9.The learned Additional Public Prosecutor also produced the copy of the flight ticket to confirm the role played by the petitioner along with the other accused in this case. He further submitted that the petitioner along with other accused, viz. Sarfaraz Ahamed and Piyush Mishra fabricated a receipt as though it was signed by the defacto complainant's husband. He would also submit that the investigation is in penultimate stage and within a short period, final report would be filed. Hence, he prayed for dismissal of this petition.

10.Considering the submissions made and on perusal of the materials placed before this Court, it is seen that the petitioner along with two others viz., Sarfaraz Ahamed and Piyush Mishra are accused in the above case. In this case, the defacto complainant's husband was arrested by the Lucknow Police on 24.02.2017 and obtained three days transit period to take him to Lucknow. During that period, he was taken by air and detained in unlawful custody. During the illegal custody, the defacto complainant, her son and her brother received threatening calls from Mobile No.7081064779. Earlier the defacto complainant's husband filed a complaint before the Inspector of Police, Teynampet Police Station on 12.05.2016 against the petitioner. Enraged with oblique motive, the petitioner conspired and colluded with his friends, Sarfaraz Ahamed and Piyush Mishra from the State of Uttar Pradesh and used the two blank signed Cheques given by the defacto complainant's husband bearing Nos.981012 and 981014 and blank promissory note given as security, filled the blank cheques as per their wish and thereafter lodged a complaint before the Aliganj Police Station. On receipt of the fabricated documents, the accused in this case projected as though the defacto complainant's husband obtained Rs.1 Crore from the said Sarfaraz Ahamed for opening a Private Medicate College and Hospital, complaint was lodged in Lucknow and the defacto complainant's husband was arrested. It is seen that now the investigation is at the penultimate stage and soon final report to be filed after collecting the call details and other particulars. Further, it is seen that a civil suit is filed after registration of the criminal case.

11.In view of the above, this Court finds no reason to interfere with the investigation conducted by the respondent police. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
   EDF-II Team-II,
   Central Crime Branch,
   Veppery, Chennai.

2. The Public Prosecutor,
   High Court, Madras.

+1cc to M/s.S.Haja Mohideen Gisthi, Advocate, S.R.No.36972

Crl.O.P.No.21137 of 2017

RSV(CO)
UMA(28/06/2022)