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.21140 of 2017
and
Crl.MP.No.12485 of 2017

Kamaraj ... Petitioner

Vs.

1. The Inspector of Police,
E-3 Police Station,
Teynampet, Chennai.

2. Maru Sudheer ... 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.652 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.652 of 2017 for the offences under Sections 201, 294(b), 323, 406, 409, 420, 506(ii) IPC and Section 4 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 filed this quash petition.

2.The gist of the complaint is that the defacto complainant Dr.Maru Sudheer developed acquaintance with the petitioner herein and during the year 2011, he borrowed a sum of Rs.20 lakhs with interest @ 5% per month from the petitioner. The defacto complainant was paying the interest regularly till 2013. Subsequently, during the period from 2014-2016 the interest amount was charged at Rs.80,000/- per month and the same was remitted in the bank account and Rs.1,20,000/- was paid towards principal. Thereafter, the petitioner showed a false account stating that the defacto complainant borrowed money from 20.04.2011 to 20.12.2013 on various dates, totally to the tune of Rs.40 lakhs. The petitioner after receiving the interest and principal amount from the defacto complainant through cheques and by bank transaction made a false claim and produced the false statement as though the defacto complainant had not made any payments. However, during the month of March 2016, the defacto complainant remitted a sum of Rs.10 lakhs to the petitioner and he was due only to the tune of Rs.10 lakhs. The statement of account shown as due was around Rs.40 lakhs which the defacto complainant objected. This being so, on 07.05.2016 the petitioner along with henchmen went to the house of the defacto complainant, threatened him and forced him to pay Rs.30 lakhs towards principal and interest of Rs.90,000/- every month from April 2016. The threat and conversation at his home was recorded by the defacto complainant in his mobile, the petitioner snatched the mobile phone and when the same was questioned by the defacto complainant, he was assaulted. Thereafter, the petitioner took the mobile phone, two hours later after deleting the recordings the mobile phone was thrusted to the watchman. The defacto complainant along with his mobile phone lodged a complaint on 12.05.2016. The Police failed to take any action. On 09.11.2016, the defacto complainant filed a petition under Section 156(3) Cr.P.C. before the learned XVIII Metropolitan Magistrate, Saidapet, who forwarded the same to the respondent police on 07.03.2017 and thereafter, case in Crime No.652 of 2017 was registered.

3.The contention of the learned counsel for the petitioner is that the defacto complainant came in contact with the petitioner through Dr.Jithendra Singh, who introduced the defacto complainant. The defacto complainant and his wife are Doctors. The defacto complainant claim that he visits Medical Colleges for inspection and hence, he can get a medical seat at a lesser rate. The petitioner approached the defacto complainant for a medical seat for his niece, thereafter it did not materialize but their relationship continued. The defacto complainant approached the petitioner, sought for a loan for construction of a clinic for his wife. During the period from 20.12.2013 to 05.02.2016, a sum of Rs.59 lakhs was transferred though bank. Out of the principal amount, Rs.29 lakhs was paid and for the balance amount of Rs.30 lakhs, the defacto complainant issued two cheques, promissory note and agreed to pay 24% interest. When the principal amount and the interest was demanded, the defacto complainant lodged a false complaint. Hence, legal notice was sent to the defacto complainant on 09.06.2016 who had sent a reply on 24.06.2016 admitting the money transaction but restricting the transaction to only Rs.20 lakhs. He also admits about the issuance of signed cheques and promissory note. As per the Negotiable Instruments Act, by handing over the signed instrument, the payee gives authority to the holder of the cheque to fill up the same unless contrary instructions are given. The defacto complainant in his reply does not deny the receiving of Rs.59 lakhs in his bank account, on the contrary, restricts his loan to the extent of Rs.20 lakhs alone. The petitioner filed a civil suit in C.S.No.940 of 2016. The defacto complainant having borrowed for commercial purpose with interest @ 24% which is a commercial transaction now cannot have a quarrel giving criminal colour to a civil dispute. The respondent police who initially received the complaint, assigned C.S.R.No.302 of 2016. It is to be seen that the occurrence is said to have taken place on 07.05.2016 but the complaint was lodged only on 12.05.2016, thereafter C.S.R. was closed. After closure of C.S.R., the defacto complainant approaches the Magistrate Court in C.M.P.No.3460 of 2016 on 09.11.2016 with a delay of five months. Thereafter on the directions of the learned XVIII Metropolitan Magistrate, Saidapet FIR was registered on 07.03.2017. He further submitted that in a commercial transaction there is no question of charging exorbitant interest wherein both the principal and the borrower are free to fix the interest rate for the commercial requirement. In this case the commercial requirement is building a clinic for the defacto complainant's wife for which the defacto complainant borrowed the amount.

4.Now the dispute is only with regard to the quantum which is a civil dispute and no criminal case can be filed. The learned counsel for the petitioner submitted that the case was registered only in the year 2017, the petitioner not even called for enquiry, no explanation was obtained from the petitioner and the respondent police for the reason best known to them kept the FIR pending endlessly. Further, even in the written statement filed in the civil suit, the defacto complainant does not dispute the loan transaction between them. Hence, he sought for quashing of the complaint.

5.The learned counsel for the second respondent/defacto complainant submits that the defacto complainant is an Orthopedic Surgeon, at the time of availing loan, the petitioner obtained two signed blank cheques and promissory note as security from the defacto complainant. The defacto complainant was regularly making payment towards interest and also part of the principal periodically. Despite the same, the petitioner made a calculation on his own not giving proper credit and produced statement as though the defacto complainant is due to the tune of Rs.30 lakhs. Further, the petitioner forced the defacto complainant for exorbitant interest. When the same was opposed, the petitioner along with henchmen went to the defacto complainant's house, threatened him and his family members with dire consequences. Further, the petitioner claimed that he has got political and muscle men contact, he would finish off the defacto complainant and his family members. Fearing threat for his life, the defacto complainant lodged a complaint with the respondent police, initially C.S.R number was assigned, thereafter no action was taken. Thereafter, the defacto complainant approached the learned XVIII Metropolitan Magistrate, Saidapet and then only FIR was registered. The defacto complainant produced all the documents, his mobile phone wherein earlier conversation and recordings made on the day of threat, though erased will be available in the mobile phone. The respondent police received the same and sent the mobile phone for forensic examination. He further submitted that not stopping with the same, the petitioner conspired with Sarfaraz Ahamed and Piyush Mishra, handed over the two signed blank cheques and promissory note, who in turn prepared a forged receipt, filed a case in Lucknow and obtained a warrant. The Lucknow Police came to Chennai, arrested the defacto complainant while he was back from his duty, thereafter Doctors agitated and held Dharna. He further submitted that the defacto complainant was illegally taken to Lucknow on 24.12.2017, for which his wife lodged a complaint and a case in Crime No.66 of 2017 was registered by the CCB Police which is a distinct occurrence. Further, civil suit was filed by the petitioner after lodging of the criminal complaint by the defacto complainant. Hence, he prays for dismissal of this petition.

6.The learned Additional Public Prosecutor appearing for the first respondent submitted that the second respondent/defacto complainant filed a petition before the learned XVIII Metropolitan Magistrate, Saidapet, Chennai in Crl.M.P.No.3460 of 2016 under Section 156(3) Cr.P.C. and on the direction of the learned Magistrate, FIR came to be registered. It is further submitted that in this case charge sheet is almost ready and hence, he prayed for dismissal of this petition.

7.Considering the submissions made and on perusal of the materials placed before this Court, it is seen that the defacto complainant who is a Doctor by profession, obtained loan from the petitioner for construction of a Clinic. He paid the interest amount regularly and also principal amount in portions. There is some dispute with regard to the payment for which the petitioner produced a statement showing that the defacto complainant is due to huge sum and the interest worked out was exorbitant. The petitioner claimed that it is a commercial transaction with interest @ 24%, the interest rate is justifiable and acceptable one. The petitioner is a financier and doing finance business. The petitioner not stopping with the same entered into the house of the defacto complainant along with henchmen threatened the defacto complainant and his family members with dire consequences. Further, the mobile phone of the defacto complainant was snatched and later thrown back. The respondent police initially assigned C.S.R. Number for the complaint lodged by the defacto complainant and later, refused to file FIR. Thereafter, on the directions of the learned XVIII Metropolitan Magistrate, Saidapet FIR registered, investigation commenced, the investigation is at the penultimate stage and soon final report to be filed in this case. In view of the same, this Court is not inclined to entertain this petition.

8.The learned counsel for the petitioner submitted that in the event of the charge sheet to be filed, he may be permitted to challenge the same.

9.In the result, the Criminal Original Petition stands dismissed. It is open to the petitioner to challenge the charge sheet in Crime No.652 of 2017, if he is desired to do so. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

cse

To

1. The Inspector of Police,
   E-3 Police Station,
   Teynampet, Chennai.

2. The Public Prosecutor,
   High Court, Madras.

+1cc to M/s.S.Haja Mohideen Gisthi, Advocate, S.R.No.36972
(01/07/2022)

Crl.O.P.No.21140 of 2017

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