



Crl.RC.1435 of 2022

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.11.2022

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1435 of 2022

K.Kannan ...Petitioner/Petitioner

Vs.

1. The State Represented by
Inspector of Police,
Pallapatty Police Station,
Salem District. ...1st Respondent/Respondent
2. The Branch Manager,
Manapuram Gold Finance,
Meyyanur Road,
Salem. ...2nd Respondent/Accused

The Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure seeking to set aside the Order dated 16.08.2022 made in Crl.M.P.No.1739 of 2022 on the file of the learned Judicial Magistrate No.II, Salem and to allow the above Criminal Revision Petition by directing first respondent to register the FIR against the second respondent/company.



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For Petitioner : Mr.C.Prabahakaran

For Respondents: Mr.S.Sugendran
Additional Public Prosecutor for R1

ORDER

This criminal revision is filed to set aside the Order passed by the learned Judicial Magistrate No.II, Salem in Crl.M.P.No.1739 of 2022 dated 16.08.2022.

2. The petitioner filed a petition under Section 156(3) of Cr.P.C., before the learned Judicial Magistrate No.II, Salem to direct the respondent police to register an FIR, based on his complaint dated 02.07.2021 and conduct an investigation. The said petition was dismissed by the learned Judicial Magistrate No.II, Salem. Aggrieved over the order passed by the learned Judicial Magistrate No.II, Salem, present revision has been filed before this Court.



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3. The learned counsel for the petitioner would submit that the petitioner got jewel loan from the second respondent and after taking the loan, he repaid certain amount. Due to Covid-19, he was in hospital and unable to pay the interest regularly. However, on 29.03.2021 the petitioner paid the interest of Rs.32,000/- to the second respondent/company. When the petitioner sought return of the pledged jewel, the second respondent/company stated that the gold was already sold in public auction. The second respondent has not followed the statutory provisions. Before selling the pledged jewels, they have not issued official notice or made any intimation to the petitioner about the public auction on the pledged jewels. Before lodging a complaint, the second respondent had not properly responded. Therefore, the petitioner sent a complaint to the Inspector of Police on 02.07.2021 and on the same day, CSR No.365 of 2021 was issued. Subsequently, they have not taken any action against the second respondent and thereafter the petitioner sent a complaint to the Superior Officer viz., the Commissioner of Police, Salem on 24.11.2021 and the same was also pending and no action



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was initiated. Therefore, the complaint was given before the learned Judicial Magistrate to direct the jurisdictional police to register the case and take action. Without considering the averments made in the complaint, the learned Magistrate dismissed the petition on the ground that the complaint pertains to civil dispute. It is a settled proposition of law that as per the decision of the Hon'ble Supreme Court reported in **2013 MLJ CRL 4 579** in the case of ***Lalitha Kumari Vs. Government of Uttar Pradesh and Others*** and as per Section 154 of Cr.P.C, the Police are obligated to register an FIR and proceed with the investigation. But the learned Magistrate failed to understand the law laid down by the Hon'ble Supreme Court reported in ***Lalitha Kumari's case*** and getting reference from the said case, dismissed the case at the stage of preliminary enquiry. On preliminary enquiry, the trial Court found that there was no prima facie case of cognizable offence which is against the proposition of law and the trial Court misinterpreted the said decision cited supra. Therefore, the order of the trial Court is perverse and the order passed by the learned Magistrate is liable to be set aside.



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4. The learned Additional Public Prosecutor would submit that there was a banker and customer relationship between the parties. Since the petitioner did not act upon the terms and conditions of the gold loan agreement, the second respondent/company had auctioned the pledged jewels on the ground of non-payment. It is a contractual agreement between both the parties. If a party breaches any one of the conditions in the contract, the other party can take legal action, that was stipulated in the terms and conditions of the agreement. Therefore, the learned Magistrate has rightly dismissed the petition on the ground that the dispute between the parties are civil in nature and that cannot be considered as a criminal case. Therefore, this case is liable to be dismissed.

5. Heard both side counsel and perused the materials available on record.

6. Admittedly, the petitioner borrowed gold loan from the second respondent by pledging his jewels and the jewels are brought to be sold in



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auction. The complainant/petitioner agreed to repay the jewel loan. But during Covid-19 pandemic, he could not pay the interest and therefore the second respondent company without giving any intimation sold the jewels in public auction.



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7. On perusal of the records, it is found that there was a contractual liability between the petitioner and the second respondent. The main contention raised by the learned counsel for the petitioner is that he agreed to repay the jewel loan but without giving any intimation to him, the second respondent/company has sold the pledged jewel. If at all he has got any of the documents to prove that he has repaid the amount to the second respondent, the second respondent should have returned the pledged jewel. Even the petitioner has not sent notice to the second respondent and he simply straight away filed a complaint before the Police and the Police also issued CSR. When approached the Court of the learned Magistrate, the learned Magistrate has found that the dispute is civil in nature. Therefore, learned Magistrate dismissed the petition.

8. On a reading of the entire materials, this Court also finds that there is a contractual relationship between the parties. If a party breaches a contract, the other can initiate legal action against the person who breaches the contract



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or violates the terms and conditions of the agreement/contract. Even the records also show that the petitioner has not sent any notice to the second respondent. The learned counsel for the petitioner would submit that the second respondent orally informed the petitioner that the jewels are to be sold in public auction. The petitioner agreed to repay the jewel loan. Despite the same, the second respondent sold the jewels without giving any intimation. If that be the case, the service of the Police is not required to collect the evidence. However, the revision petitioner straightaway filed a private complaint before the learned Magistrate under Section 200 Cr.P.C., to establish his case with documentary evidence and to direct the respondent police to register the case and conduct the investigation, which is absolutely not necessary. Therefore, this Court also finds that the petitioner admitted the relationship between the parties and admitted the contractual terms. Hence, the petitioner can work out his remedy in the manner known to law by invoking appropriate provisions before the appropriate forum. The petitioner is at liberty to approach the learned Judicial Magistrate by filing a private complaint. In case he files a complaint, the learned Magistrate is directed to



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take cognizance of the complaint under Section 200 of Cr.P.C and to proceed the case without influencing any of the observations made in this order.

With the above direction, this Criminal Revision is dismissed.

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Index : Yes/No
Internet : Yes/No
dh

To
The Judicial Magistrate No.II,
Salem.



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P.VELMURUGAN, J.,

dh

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