



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date: 11/04/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.OP(MD)No.2990 of 2019

and

Crl.MP(MD)No.1639 of 2019

1.Sakila Banu
2.Surya Begamn

:Petitioners/A1 and A2

Vs.

1.Govindarajan

: R1/Complainant

2.The Inspector of Police,
Karuppayoorani Police Station,
Madurai.

: R2/De-facto Complainant

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records in CC No.59 of 2016 pending on the file of the Judicial Magistrate No.VI, Madurai and quash the same.

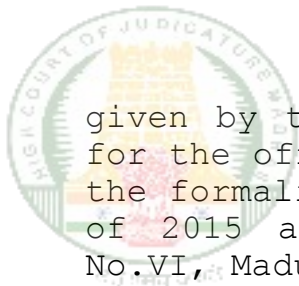
For Petitioners	: Mr.R.Ramasamy
For 1 st Respondent	: No appearance
For 2 nd Respondent	: Mr.B.Nambi Selvan
	Additional Public Prosecutor

O R D E R

This petition has been filed seeking quashment of the case in CC No.59 of 2016 pending on the file of the Judicial Magistrate No.VI, Madurai.

2.The case of the prosecution in brief:-

The de-facto complainant and the accused persons are known to each others. On 15/07/2012, the accused persons came to the house of the de-facto complainant and requested hand loan of Rs.1,50,000/- stating that they have to admit their son in the medical college and also promised to repay the same within 10 days. So on the same day, the amount was paid. Later, they failed to repay the same. On 18/12/2013, they executed a deed, undertaking to repay the amount on or before 31/01/2014. Even after that, they have not returned the money in spite of undertaking. So on the basis of the complaint



given by the de-facto complainant, a case in Crime No.365 of 2014 for the offences under sections 406 and 420 IPC and after completing the formalities of investigation, final report was filed in CC No.59 of 2015 and it was taken cognizance by the Judicial Magistrate No.VI, Madurai.

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3. Seeking quashment of the same, this petition has been filed.

4. Heard both sides.

5. In spite of receipt of summon, the first respondent has not chosen to appear either in person or through Advocate. So the learned counsel for the petitioner and the learned Government Advocate (Criminal side) appearing for the second respondent was heard and the entire CD file has been called and perused.

6. The learned counsel appearing for the petitioner would straightway go to the averments made in the final report and would submit that it is out and doubt money transaction between the parties and absolutely ingredients of section 406 and 420 IPC are not attracted. According to him, the document of undertaking bond has been executed. Absolutely, no material has been collected during the course of investigation that even at the inception of transaction, the intention of cheating the de-facto complainant was available and according to him, it is not even the case of the de-facto complainant, even at the inception of the transaction, their intention of cheating. If they are any intention to cheat at the inception, they would not have executed the bond of undertaking.

7. In the light of the above said development, let us go to the document produced by the petitioner. The document of loan is, dated 12/12/2013 which has been executed by the first accused namely Sakila Banu, wherein she has stated that she received a sum of Rs.2,00,000/ for discharging her liability at the rate of 2%. After repayment of the above said amount with interest, the document of loan must be returned, it is dated 18/12/2013. But in the first page, the date of loan is wrongly mentioned as 12/12/2013.

8. Now whatever it may be, even as per the case of the first respondent, the document was executed on 18/12/2013. On that date only, the accused persons received Rs.2,00,000/-. But the second accused has not signed in the document. It has been simply stated that the second accused namely Surya Begam also accompanied with A1 at the time of borrowing the amount and also represented that A1's son is to be admitted in the medical college and for that reason only, they required the amount. How the second accused is related in the transaction between A1 and the de-facto complainant is not clear on record. Simply because, A2 has also accompanied A1 during the course of borrowal, that will not cloth A2 with criminal liability, when A1 has failed to repay the amount. According to the first

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spite of repeated demand, that was not repaid by A1. When that being the position, the de-facto complainant ought to have filed proper suit for recovering the amount. Whether any suit has been filed on the date of the complaint is not clear on record. The complaint has been given on 10/08/2014 well within the period of limitation. So in all probabilities, the first respondent ought to have filed the suit for recovery of money for the loan document. Without resorting to such a civil remedy, it appears that this complaint has been given. Receiving amount, failure to repay, if at all will not cloth civil liability and no criminal liability can be attached.

9.As mentioned earlier, it is not even the case of the 1st respondent that even at the time of loan transaction, the intention of cheating existed. The facts and circumstances also does not indicate such sort of intention on the part of the first accused. Criminal proceedings cannot be initiated with ulterior motive either for recovering the amount or settling the same. If such sort of complaint is entertained and tried, every loan transaction will be converted into criminal offence. So, such sort of trend should not be permitted. So this court is of the view that this is nothing, but abuse of process of court and law. So the entire prosecution is bad in law and it is liable to be quashed.

10.In the result, this criminal original petition is **allowed**. The impugned CC No.59 of 2016 on the file of the Judicial Magistrate No.VI, Madurai is quashed. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Protocol)

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/ /2022

Sub Assistant Registrar(CS)

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Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To,

1.The Judicial Magistrate No.VI,
Madurai.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Inspector of Police,
Karuppayoorani Police Station,
Madurai.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R. RAMASAMY, Advocate (SR-18660[F] dated 13/04/2022)

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11.04.2022

SS (CO)

GC(08.06.2022) 4P 5C