BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29/09/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.RC(MD)No.878 of 2022

M.Jeyaraj : Revision Petitioner/ De-facto complainant

Vs.

1.Ramakrishnan
2.Kasiammal
3.Vadivel
4.Ramamoorthy
5.A.Priya
6.Sugapriya
7.Sarathkumar
8.Suresh
9.Prakesh
10.Vani
11.B.Mahalakshmi : R1 to R11/Accused

12.The State represented by its Inspector of Police, Central Crime Branch, Madurai City. : R12/Respondent/ Respondent

Prayer: Criminal Revision is filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records pertaining to the order passed by the Judicial Magistrate No.1, Madurai, in Cr.M.P No.1385 of 2022, vide his order, dated 10/08/2022 and set aside the same and further direct the 12^{th} respondent Police to register an FIR based upon the petitioner's complaint.

For Petitioner : Mr.S.Balaji

For R1 to R11 : No appearance

For 12 Respondent : Mr.SS.Madhavan Government Advocate (Criminal side)

O R D E R

This criminal revision has been preferred seeking to set aside the order of the dismissal, that was passed by the trial court namely the Judicial Magistrate No.1, Madurai, in Crl.MP No.1385 of 2022, dated 10/08/2022 and to direct the 12th respondent Police to register an FIR, based upon the petitioner's complaint.

2.**The facts in brief**:-

The revision petitioner namely M.Jeyaraj filed a petition/complaint under section 156(3) Cr.P.C before the Judicial Magistrate No.1, Madurai stating that he is running an Educational Social Trust called 'Nivetha Trust' and in that Trust, A2 and A4 were Managing Trustees. A1 to A3 formed the Trust called 'Sri Mariamman Trust', Nilakottai. They represented that they are managing the above said Trust. Believing the words of the above said Managing Trustees, he lent money to various persons namely A4 to A11 through the Field Officer of the above said Mariammal Trust. The above said amount varies from minimum Rs.25,000/-, it exceeded several lakhs. In the complaint itself, he enclosed the list of borrowers, which runs to 201.

3.Later, some sort of trouble arose between the office-bearers of the above said Trust and the petitioner's Trust. A meeting was convened to settle the issue. In the meeting, all the office-bearers participated and it is made clear that the above said amount must be returned. Undertaking was also given by the office-bearers to return the loan amount, but that was not complied with. Notice was ordered, on 20/06/2020 to A1 to A3. Later, he has also issued stop payment order in respect of the cheque, that has been issued to the borrowers. On the basis of the false complaint, this petitioner was also arrayed as an accused and he has remanded to judicial custody and released on bail. Now all the accused persons joined together and cheated Rs.1,41,55,000/-. So on the basis of the above said allegation, he filed a complaint/petition for necessary action. That was dismissed by the trial court stating that it is purely a civil transaction between the parties and no criminality is involved.

4.Challenging the above said order, this revision has been filed by the petitioner on the ground that since, cognizable offence has been made out, even on the face of the records, the trial court ought to have referred the complaint for investigation; that jurisdiction was not properly exercised by the trial court.

5.But the learned Government Advocate (Criminal side) appearing for the 12th respondent police would submit that even on the face of the value of the allegations mentioned in the complaint, it comes under the definition of civil dispute. So no criminality is involved. According to him, the order of dismissal, that was passed by the trial court requires no interference.

6.Perusal of the records shows that it is a case of lending money to various persons. In pursuance of the object and purpose of the Trust called 'Nivetha Trust', when the borrowers defaulted, the remedy is available to the petitioner is to file a proper suit or other proceedings, as the case may be. He only issued a notice. When that is being so, mere non-returning of the amount will not *prima facie* show the offence under sections 420 and 406 IPC.

7.It is not even mentioned by the petitioner in the complaint/petition that even at the time of entering into the above said loan transaction, all the accused persons joined together, conspired and intended to cheat the petitioner's Trust. So in the absence of any allegation to the effect even at the inception of the transaction, there was an intention to cheat, then the conclusion that has been arrived by the trial court has to be upheld. It does not suffer from any illegality or irregularity.

8.Even in the complaint given by the petitioner before the concerned authorities, prior to the filing of the complaint/petition, it was closed after enquiry, finding that this petitioner is involved in Crime No.1 of 2022 for the offences punishable under sections 406, 420 and 120(B) and section 5 of the Tamil Nadu Protection of Interest of Depositors (In Financial Establishment) Act, 1997. That criminal case has been suppressed, while lodging the complaint/petition. The copy of the above said closure report is also available in the records submitted by the trial court. It is seen that only as a counter blast to the above said criminal case, this complaint has been given with an ulterior motive. This is nothing, but an abuse of process of court and law. So I find no merit in the petition and accordingly, this petition is liable to be dismissed.

9.In the result, this criminal revision is **dismissed.**

29/09/2022

Index:Yes/No
Internet:Yes/No

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To,

1.The Judicial Magistrate No.1,
  Madurai.

2.The Inspector of Police,
  Central Crime Branch,
  Madurai City.

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

G.ILANGOVAN, J

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