BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.01.2022

Pronounced on : 11.03.2022

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

CRL.O.P.(MD).No.22136 of 2018

and

CRL.M.P(MD)Nos.10305 and 10306 of 2018

Latha : Petitioner/A1

Vs.

1.The Sub Inspector of Police,
District Crime Branch,
Dindigul.
Crime No.24 of 2016. : Respondent /Complainant

2.Ganesan : Respondent/ Defacto Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records pertaining to the charge sheet in C.C.No.7 of 2018 on the file of the Judicial Magistrate Court No.II, Dindigul and quash the same as illegal as against the petitioner.

For Petitioners : Mr.S.Nedumaran

For Respondents : Mr.M.Muthumanikkam, for R1.
Government Advocate (Criminal Side), for R1.
: Mr.K.Samidurai, for R2.

ORDER

The Criminal Original Petition has been filed, invoking Section 482 of Code of Criminal Procedure, seeking orders to call for the records pertaining to the charge sheet in C.C.No.7 of 2018 on the file of the Judicial Magistrate Court No.II, Dindigul and quash the same.

2.The petitioner is the first accused in C.C.No.7 of 2018 on the file of the Judicial Magistrate Court No.II, Dindigul. On the basis of the complaint lodged by the second respondent, FIR came to be registered in Crime No.24 of 2016 against two persons including the petitioner herein for the offence punishable under Sections 406, 420 and 506(i) IPC.

3.The first respondent, after completing the investigation has laid the final report under Section 173 Cr.P.C, dated 20.11.2017 against two persons, arraying the petitioner as first accused for the offence under Sections 406, 420 and 506(i) IPC and the case was taken on file in C.C.No.7 of 2018 and the same is pending on the file of the Court of the Judicial Magistrate No.II, Dindigul.

4.Admittedly, the petitioner/first accused is the wife of second accused and that subsequently the second accused had died.

5.The case of the prosecution is that the accused 1 and 2 had approached the defacto complainant and informed that they have availed housing loan from the State Bank of India and since they have not repaid the loan amount, the Bank Authorities have been taking steps to bring the property for auction and requested the complainant to advance the loan amount of Rs.30 lakhs, that since the accused were his relatives and since the first accused has been working as Professor in the Government Arts College, has advanced loan amount of Rs.30 lakhs, that the accused have redeemed the property with the help of money given by the complainant and that as per the directions of this Court, they have paid Rs. 8,25,000/- and that they have failed to pay the balance amount and thereby cheated the complainant.

6.Admittedly, the defacto complainant is the maternal uncle of the second accused. The petitioner's case is that her husband had received Rs.30 laksh from the complainant, that the first accused was informed by her husband that out of Rs.30 lakhs, most of the amount was given towards remuneration and expenses made by him for maintaining the farm land of the defacto complainant, that he has received Rs.5 lakhs as loan and that will also be adjusted towards future remuneration and expenses, that they had the above transactions in the year 2013, that the petitioner's husband, who was a hard worker has spent his whole life time for developing the land of the complainant and at last he fell with illness, that though the petitioner had spent huge amount for medical expenses, she had lost her husband, that the complainant has lodged the complaint on 22.07.2016 before the respondent police and that the first respondent did not conduct any valid investigation with respect to the transactions existed between the complainant and the petitioner's husband and filed a final report hurriedly.

7.The learned counsel for the petitioner would submit that even if the allegations in the FIR and charge sheet are being taken by their face value, the same do not constitute an offence, that the above criminal proceeding is manifestly instituted with ulterior motives for wreaking vengeance on the petitioner and that the defacto complainant has wantonly implicated the petitioner with sole intention to harass her.

8.As already pointed out, the petitioner is working as a professor in Women's College, Nilakkottai. It is not in dispute that the petitioner has earlier filed a petition in Crl.OP.(MD)No.17608 of 2016, seeking anticipatory bail and this Court vide order dated 02.12.2016, recording the affidavit filed by the petitioner undertaking to pay amounts in some instalments, has granted anticipatory bail.

9.It is also not in dispute that the petitioner in pursuance of the said orders has paid Rs.8,25,000/-. According to the petitioner, she had deposited a sum of Rs.10,75,000/- in the Bank Account of the defacto complainant, but admittedly, she has not produced any material to substantiate the same.

10.Whatever it is, the main contention of the intervenor is that though loan was taken from the defacto complainant to redeem their house property from the SBI and the property was redeemed, they have not chosen to pay the amount and that thereby they have cheated him.

11.The learned counsel for the intervenor would submit that the petitioner, in the affidavit filed in support of the earlier anticipatory bail petition in Crl.OP(MD)No. 17608 of 2016, has specifically admitted the borrowal of Rs.30 lakhs from the defacto complainant and redemption of property from the SBI in the said affidavit.

12.The petitioner has further stated that they have leased out the ground floor of the house property to one Karunakaran for Rs.4,00,000/-, that after getting the Othi amount of Rs.4,00,000/-, they have settled the loan amount borrowed from third parties, that after redeeming, mortgaged the property again with Magma Housing Finance for Rs.32 Lakhs, that they have been paying Rs. 43,700/- per month towards EMI, that she is willing to settle the loan amount of Rs.30 lakhs to the complainant and that she is arranging for take over loan from LIC Housing Finance Ltd and State Bank of India, Jayamangalam Branch as the interest rate is comparatively less.

13.As rightly contended by the learned counsel for the intervenor, the petitioner after taking a specific stand in the earlier petition for anticipatory bail, that they have borrowed a sum of Rs.30 lakhs from the defacto complainant only for redeeming the house property from the State Bank of India now she has taken a 'U' turn and in the present complaint, she has alleged that the defacto complainant gave Rs.30 laksh to her husband towards remuneration and expenses made by her husband for maintaining the lands of the defacto complainant.

14.It is the main contention of the defacto complainant that when he was in USA, the petitioner has contacted him through phone and e-mail and requested for loan of Rs.30 Lakhs to redeem their house property from State Bank and that since the petitioner's husband was his relative and as the petitioner was working in a Government Arts College at Nilakkottai and as they have sent the copies of the auction notice sent by the State Bank of India, he has paid Rs.30 Lakhs to the bank account of the petitioner.

15.It is their further case that after returning from USA in April 2016, he met the accused at Residency Hotel, Batlakundu and demanded them to settle the loan amount, that the accused had promised to settle the same at the earliest, but failed to do so and that when the complainant met them at their residence on 17.06.2016, demanded immediate settlement of the loan amount, they refused to pay the amount and threatened him.

16.The learned counsel for the intervenor would submit that the accused have promised that after redeeming the property, they would take loan with the help of that property and repaid the loan amount to the complainant, but even after mortgaging the property with other financial institutions, they have not chosen to repay the amount.

17.At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in **Rajesh Bajaj Vs. State NCT of Delhi and others** reported in **1999 (3) SCC 259**, dated 12.03.2000, wherein the Hon'ble Supreme Court has specifically held that the intention of the person, who induces the victim of his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not and the relevant passages are extracted hereunder :

> *"The crux of the postulate is the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive is discerning whether there was commission of offence or not. The complainant has stated in the body of the complaint that he was induced to believe that respondent would honour payment on receipt of invoices, and that the complainant realised later that the intentions of the respondent were not clear. He also mentioned that respondent after receiving the goods have sold them to others and still he did not pay the money. Such averments would prima facie make out a case for investigation by the authorities."*

18.As per the dictum of Hon'ble Supreme Court, it is not necessary that the complainant in his complaint should specify in so many words that the intention of the accused was dishonest or fraudulent. In the case on hand, a cursory perusal of FIR and charge sheet and the statements filed along with charge sheet would reveal that the complainant has laid a factual foundation for the offences alleged.

19.The Hon'ble Supreme Court in ***Dr.Dhruvaram Murlidhar Sonar vs. The State of Maharashtra and others*** reported in ***2019 (2018) SCC 191*** has specifically held that exercise of powers under Section 482 Cr.P.C. to quash the proceedings is an exception and not a rule. It is settled law that the inherent jurisdiction under Section 482 Cr.P.C. is wide but at the same time, the same is to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself.

20.A perusal of the FIR, statements recorded by the Investigating Officer and other materials collected, on the basis of which, the charge sheet has been laid, would disclose *prima facie* case against the accused at this stage and there appear to be sufficient ground for proceeding against the petitioner. Moreover, the petitioner has not shown any other reason or ground or any other justification to quash the final report, as the case does not fall in any of the categories recognized by the Hon'ble Supreme Court, which may justify their quashing. Hence, this Court has no hesitation to hold that the above petition is devoid of merits and the same is liable to be dismissed.

21.In the result, the Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (A.D.I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

das

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 Court No.II,
Dindigul.

2.The Sub Inspector of Police,
District Crime Branch, Dindigul.

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

+1 CC to M/s.K.SAMIDURAI, Advocate (SR-11856[F] dated 14/03/2022)

+1 CC to M/s.S.NEDUMARAN, Advocate (SR-11952[F] dated 14/03/2022)

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