IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2023

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THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P. No. 2771 of 2019
and
Crl.M.P. No. 1799 of 2019

1.P.Shanmugam

2.P.Mani

3.P.S.Karthikeyan

4.Parvatham ... Petitioners

Vs.

1.State represented by
Inspector of Police,
Sankagiri Police Station,
Salem District.

2.Ramasamy Gounder ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records in F.I.R.No.31 of 2019 on the file of the 1st respondent and quash the same.

For Petitioners	:	Mr. M.R.Thangavel
For Respondent 1	:	Mr. A.Damodaran Additional Public Prosecutor
For Respondent 2	:	Mr.T.Balaji

O R D E R

The petition is filed to quash the FIR in Crime No.31 of 2019 for the alleged offences under Section 4 of the Tamilnadu Prohibition of Charging Exorbitant Interest Act, 2003 and Section 420, 467, 468 and 471 of the Indian Penal Code.

2. It is alleged in the FIR that the 2nd respondent had borrowed a sum of Rs.25,00,000/- from the 1st petitioner and his brother the 2nd petitioner in the year 1997; that in order to secure the said loan the 2nd

respondent had executed a Power of Attorney in favour of the 1st petitioner in the year 1997; that the 2nd respondent had also given 10 blank cheques and 20 signed/undated bond papers to the 1st petitioner; that the 2nd respondent was paying interest till 15.02.2006 and had repaid a sum of Rs.10,00,000/- towards principal amount and continued to pay interest for the balance principal amount of Rs.15,00,000/- till 20.09.2012; that in November 2006, the defacto complainant had cancelled the Power of Attorney executed in favour of the 2nd petitioner and executed a registered sale deed in favour of the 3rd petitioner on 27.11.2006; that on 20.09.2012, the defacto complainant approached the petitioners for re-conveying the property which was sold by him and that he would return the principal amount borrowed from them; that the petitioners demanded Rs.1 Crore from the defacto complainant and threatened the defacto complainant to vacate the house; and that the petitioners were therefore liable for the offences under under Section 4 of The Tamilnadu Prohibition of Charging Exorbitant Interest Act, 2003 and Section 420, 467, 468 and 471 of the Indian Penal Code.

3. The learned counsel for the petitioners would submit that in respect of a sale transaction which took place in the year 2006, the impugned complaint has been given in the year 2019. There is no document produced by the defacto complainant to show that there was a loan transaction and that interest was paid for the alleged loan taken by the 2nd respondent. Admittedly, the sale deed was executed in the year 2006 and the impugned complaint is contrary to the registered document, without any basis and is nothing but an abuse of process of law.

4. The learned counsel for the 2nd respondent, however would submit that the transactions are sham and the fact that the 2nd respondent is in possession of the property would show that the sale deed was never intended to be acted upon. The petitioners had illegally grabbed the property by making false representation to the 2nd respondent that they would re-convey the property after the loan amount is discharged by the 2nd respondent. The 2nd respondent made

all efforts to repay the loan amount and get the property re-conveyed on the promise by the petitioners. However, the petitioners with dishonest intention had delayed and hence the 2nd respondent was forced to give this complaint.

5. The learned Additional Public Prosecutor reiterated the submissions made by the learned counsel for the 2nd respondent and submitted that since the matter is under investigation, the impugned complaint may not be quashed and prayed for the dismissal of the quash petition.

6. This Court on perusal of the impugned complaint finds that the allegation is that the petitioners committed the offences of forgery, cheating and the offence under under Section 4 of The Tamilnadu Prohibition of Charging Exorbitant Interest Act, 2003. Firstly, in order to attract the offence of forgery, there is no allegation in the impugned FIR to show as to what were the documents allegedly forged by the petitioners. Admittedly, the 2nd respondent had executed a sale deed in

the year 2006. The case is that he had executed the sale deed only to secure the loan obtained by him and it was not intended to be a sale deed. This would not amount to forgery. It is also the case of the 2nd respondent that he had made an attempt in the year 2012 to obtain the release of the property. Even thereafter no steps have been taken by him to redeem the property. Hence, the allegation in the impugned FIR which is lodged 14 years after the alleged sale deed that the 2nd respondent was deceived and made to execute the sale deed, cannot be sustained. Therefore, the offence of cheating is also not made out.

7. As regards the offence under Section 4 of the Tamilnadu Prohibition of Charging Exorbitant Interest Act, it is seen that the 2nd respondent is unable to produce any document evidencing the loan and the interest paid by him. Merely because the 2nd respondent is in possession of the property, it cannot be said that there was a loan obtained by the 2nd respondent. As to how the property is still in possession of the 2nd respondent and as to whether the petitioners are entitled to possession are matters for adjudication by the Civil Court.

In the light of the facts narrated above, this Court is of the view that the impugned FIR is an abuse of process of law and is liable to be quashed.

8. In the result, the petition is allowed. Consequently, the connected miscellaneous petition is closed. No costs.

25.04.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation :Yes/No
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To

The Inspector of Police,
Sankagiri Police Station,
Salem District.

SUNDER MOHAN. J,

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