



Crl.O.P. No.5803 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.06.2023

PRONOUNCED ON : 03.07.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P. No.5803 of 2021

&

Crl.M.P.Nos. 3761 & 3763 of 2021

S. Mohankumar

... Petitioner

Vs.

1.The State

Represented by the Inspector of Police

City Crime Branch, Chit & Kanthuvatti, Team 32

Vepery, Chennai – 600 007

(Crime No.164 of 2017)

2.S.Balasubramanian

... Respondents



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PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records relating to the complaint in C.C.No.9011 of 2019 on the file of CB and CB CID, Metropolitan Magistrate Court, Egmore, Chennai and to quash the same.

For Petitioner : M/s. AL.Ganthimathi
Senior Advocate

For Respondents :Mr.N.S.Suganthan
Government Advocate (Crl.Side)
for R1
Mr.M.Santhanaraman
for R2

ORDER

The petition is to quash the final report in C.C.No.9011 of 2019 on the file of the Special Metropolitan Magistrate for CCB and CBCID, Egmore, Chennai, for the alleged offences under Sections 420, 506(1) IPC r/w 3 and 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act.

2. It is alleged in the final report that the second respondent/de facto complainant had borrowed a sum of Rs.1,50,00,000/- (Rupees One Crore Fifty Lakhs only) in two instalments



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(i.e., Rs.1,00,00,000/- (Rupees One Crore Only) in October 2008 and Rs.50,00,000 (Rupees Fifty Lakhs Only) in March 2010) from the petitioner, promising to repay with interest @ 12% p.a.; that the second respondent had paid the principal amount of Rs.1.5 Crore together with 12% interest in August 2012; that a Memorandum of Understanding (hereinafter referred to as “MOU” for the sake of convenience) was entered into on 01.06.2015: that the second respondent had paid additional interest of Rs.98,80,339/- and thus, he had totally paid Rs.5,18,18,000/- of which Rs.3,61,91,489/- was interest; that the petitioner had thus charged interest @ 33 p.a., which is prohibited under Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 and; that the petitioner is also guilty of the offences under Sections 420 and 506 (1) of Indian Penal Code, 1860.

3. (a) M/s. A.L.Ganthimathi, the learned Senior Counsel for the petitioner submitted that it is the admitted case that there was a MOU entered into between the petitioner and the second respondent/defacto complainant on 15.06.2015, though it is now the case of the second



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respondent that such an Agreement was obtained under force, which is an afterthought.

3. (b) The learned Senior Counsel further submitted that the said MOU was entered into on 15.06.2015, wherein it was agreed that the second respondent was due to pay Rs.3,10,00,000/-; that the petitioner agreed that he would receive a sum of Rs.2,65,00,000/- in full and final settlement of his dues if the second respondent paid the said amount in instalments on or before 11.10.2015; and that if he delayed the payment, he had to pay Rs.3,10,00,000/-. As per the Agreement, the second respondent had paid Rs.1.75 Crore as per the time schedule. The remaining Rs.90,00,000/- was paid in instalments, and the last payment was made on 25.05.2016. Since the petitioner did not keep up the promise as per the MOU, the second respondent was liable to pay Rs.45,00,000/- which was the agreed amount to be paid in case of delay in making the payment. Hence, the petitioner filed a Suit before this Court, which was later transferred to the IV Additional City Civil Court, Chennai, numbered O.S.No.4107 of 2019. The FIR was lodged thereafter, while the Suit was pending. The impugned final report, is therefore an abuse of process of law.



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3 (c). The learned Senior Counsel further submitted that the Suit was decreed in favour of the petitioner by the Judgment dated 04.03.2023, wherein this Court found that the defacto complainant had to pay Rs.45,00,000/- with interest at the rate of 12 % Per Annum. The learned Senior Counsel, therefore, prayed that the impugned final report is liable to be quashed.

4. (a) The learned counsel for the second respondent/defacto complainant, per contra, submitted that the allegation is that for a loan of Rs.1.5 crores, the second respondent was made to pay more than Rs.5,00,00,000/-. The MOU was obtained under coercion. The second respondent honoured the terms of the MOU and paid Rs.2,65,00,000/-. However, the demand of Rs.45,00,000/- in excess would amount to charging exorbitant interest, which is punishable.

4 (b). The learned counsel further submitted that the second respondent was entitled to prosecute the petitioner, and his right to



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complain about the offences would not be taken away merely because the petitioner had filed a Suit.

4 (c). The learned counsel further submitted that it is true that a Decree was passed in O.S.No.4107 of 2019 against the second respondent herein. However, in the Suit, the learned IV Additional Judge had not considered the question of whether the petitioner was guilty of charging exorbitant interest. The learned Judge, without considering the materials on record, had passed a Decree which is now under appeal before this Court in A.S.No.360 of 2023. This Court had also granted an interim stay on the condition that the second respondent should deposit Rs.10 lakhs, to the credit of the trial Court. The question as to whether the petitioner is guilty of charging exorbitant interest is independent of the issue in the Suit. He further submitted that the Decree in a Civil Court could not be a bar to the continuance of the impugned Proceedings.



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4 (d). The learned counsel further relied upon the Judgment of Hon'ble Supreme Court in ***K.G.Premshankar vs. Inspector of Police and another*** reported in **(2002) 8 SCC 87** in support of his submission that the Judgment in the civil case need not be conclusive in all cases and would be relevant only if any of the conditions in Section 40 to 43 of the Evidence Act are satisfied. However, in the instant case, since the conditions were not satisfied, the Judgment of the Civil Court is not relevant in the Criminal Proceedings. In such circumstances, he prayed that the impugned final report is maintainable and it cannot be quashed.

5. This Court, on perusal of the final report, finds that the second respondent, though he had denied the voluntary execution of the MOU dated 15.06.2015, had acted upon the terms of the MOU. Even according to the second respondent, he had paid the amount of Rs.2,65,00,000/-, which was agreed to be paid out of Rs.3,10,00,000/-, which was the actual due amount, as per the MOU. The second respondent had filed in his written statement, filed in O.S.No.4107 of 2019 on the file of the IV Additional City Civil Court, Chennai, the details of the payment made by him as per the



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said MOU. The petitioner had not disputed the receipt of the said payment.

Thus, it can be seen that the parties have acted upon the terms of the MOU dated 15.06.2015. The terms of the MOU were that the second respondent was due to pay Rs.3,10,00,000/- out of which the petitioner agreed to receive Rs.2,65,00,000/- if the payments were made on or before 15.10.2015 and also made a condition that if the payment terms are not adhered to, the second respondent had to pay the balance amount of Rs.45,00,000/-. It is seen that there is an allegation that the MOU was obtained by force. However, it is seen that the MOU was executed on 15.06.2015. The FIR which resulted in the complaint, was registered on 02.06.2017, i.e., two years after the execution of the MOU. It is seen that the petitioner had demanded Rs.45,00,000/- which was agreed to be paid by the second respondent in the event of a delay in the payment schedule. The question is whether the MOU dated 15.06.2015 is valid and enforceable, and the petitioner is entitled to receive Rs.45,00,000/- in terms of the MOU. The Civil Court went into this question and held that as per the MOU, the second respondent had to pay Rs.45,00,000/-. The findings in O.S.No.4107 of 2019 by the IV Additional City Civil Court, Chennai is



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extracted hereunder for better understanding:

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“8. The above reported Judgment is of no use to the defendant. Unless and otherwise, the defendant proves that the plaintiff is receiving exorbitant interest, this Court cannot go to the aid of the defendant. The defendant failed to enter into the box. No document filed to prove the collection of exorbitant interest. The burden of proof is upon the defendant to prove that the agreed rate of interest is exorbitant. The Court cannot do the calculation for the defendant. Except the question of rate of interest, no other defense taken by defendant. Having admitted the memorandum of understanding without agitation, the plaintiff is entitled to the suit amount.”

6. As already stated that the MOU was acted upon, even as per the version of the second respondent. This Court, further finds that the Civil Court Judgment is certainly relevant so far as the Criminal proceedings are concerned in the instant case. The questions as to whether the MOU was acted upon, whether there was a delay in the payment schedule and whether the second respondent is liable to pay Rs.45,00,000/-



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as agreed upon in the MOU were directly in issue before the Civil Court. In the Judgment relied upon by the learned counsel for the second respondent, the following observations would show that his submission that the Civil Court Judgment is not relevant cannot be countenanced. The relevant observations of the Hon'ble Supreme Court in ***K.G.Premshanker vs. Inspector of Police*** reported in ***(2002) 8 SCC 87*** are extracted hereunder for better understanding:

“31. Further, the judgment, order or decree passed in a previous civil proceeding, if relevant, as provided under Sections 40 and 42 or other provisions of the Evidence Act then in each case, the court has to decide to what extent it is binding or conclusive with regard to the matter(s) decided therein. Take for illustration, in a case of alleged trespass by A on B's property. B filed a suit for declaration of its title and to recover possession from A and suit is decreed. Thereafter, in a criminal prosecution by B against A for trespass, judgment passed between the parties in civil proceedings would be relevant and the court may hold that it



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conclusively establishes the title as well as possession of B over the property. In such case, A may be convicted for trespass. The illustration to Section 42 which is quoted above makes the position clear. Hence, in each and every case, the first question which would require consideration is whether judgment, order or decree is relevant, if relevant its effect. It may be relevant for a limited purpose, such as, motive or as a fact in issue. This would depend upon the facts of each case.”

7. In the instant case, it is clear that the issue of the enforceability of the MOU was gone into by the Civil Court. Further, the issue is now before this Court in appeal. The allegation in the impugned final report is that the second respondent had paid about Rs.5 Crores. This allegation is an afterthought and was made after the Civil Suit was filed by the petitioner. Further, the second respondent admittedly had acted upon the MOU and had paid Rs.2,65,00,000/-. Therefore, the issue really now is the demand of Rs.45,00,000/-. According to the petitioner, he was entitled to the said



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amount as he agreed to receive the reduced amount of Rs.2,65,00,000/- out of Rs.3,10,00,000/- provided it was paid on time. Admittedly, there was a delay. Therefore, the demand of Rs.45,00,000/ cannot be construed as charging exorbitant interest. Further that issue is before this Court now in A.S.No.360 of 2023. Hence, the offence under the Tamil Nadu Prohibition of Exorbitant Interest Act, 2003 is not made out.

8. Further as regards the offence under Section 420 IPC, it is seen that the main ingredient of deception is absent. The offence under Section 506 (i) of IPC is also not made. This Court had repeatedly held that unless there is a real threat, the offence of criminal intimidation is not made. The relevant observations of the Judgment of this Court in **Noble Mohandass Vs. State**, reported in **Manu/TN/0026/1988**, wherein this Court has held as follows:

*“7. Further for being an offence under **Section 506(2)** which is rather an important offence punishable with imprisonment which may extend to seven years, the threat should be a real one and not just a mere word when the person uttering it does exactly mean what he says and also when the person at whom threat is launched does not feel threatened actually.”*



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9. Thus, in the absence of any other allegation/material to attract the alleged offences, the impugned final report is liable to be quashed. Hence, quashed. With the above observations, the Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petitions are closed.

03.07.2023

Index : Yes/No

Internet : Yes/No

Neutral Citation: Yes/No

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To

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1. The CB and CB CID,
Metropolitan Magistrate Court,
Egmore, Chennai.
2. The Inspector of Police
City Crime Branch,
Chit & Kanthuvatti, Team 32
Vepery, Chennai – 600 007
3. The Public Prosecutor
High Court of Madras
Chennai – 600 107.



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SUNDER MOHAN,J.

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