



CrI.R.C. No.899 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

CrI.R.C.No. 899 of 2023 &

CrI.M.P. Nos. 7313 & 11521 of 2023

1. Damodar Hariram
2. Amit Damodar
3. Vinay R. Asrani
4. Ramesh L Asrani

...Petitioners

Vs.

1. The State Represented by
The Inspector of Police
CCB-I, Chennai.

2. Arumugam

...Respondents

Prayer : Criminal Revision filed under Section 397 Cr.P.C. against the order dated 20.04.2023 passed in CrI.M.P. No.3557/2023 on the file of the Metropolitan Magistrate, for Exclusive Trial of CCB cases (relating to Cheating Cases in Chennai) and CBCID Metro Cases, Egmore, Chennai 600 008.



Crl.R.C. No.899 of 2023

WEB COPY

For Petitioners : Mr.P.V.Balasubramanian, Senior Counsel
Assisted by M/s. S. Ganesh & Ganesh,
Mr. K. Jayaraman
For R1 : Mr.R. Vinothraja
Government Advocate (Crl. Side)
For R2 : Mr. R. Vivekananthan

ORDER

The revision petitioners are the accused 1 to 4 in CCB Crime No.258/2022 of Central Crime Branch, Chit & Kanthuvatti Wing, Team VII, Egmore, Chennai.

2. Arumugam, the 2nd respondent (defacto complainant) lodged a complaint with the Inspector of Police Central Crime Branch, Chit & Kanthuvatti Wing, Team VII, Egmore, Chennai stating that the present petitioners are charging exorbitant rate of interest for the loan of Rs.1,70,00,000/- borrowed by him.



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3. The case of the defacto complainant in nutshell is as follows:

- (1) The defacto complainant is running a construction business in the name and style of M/s. Rajkham Housing and M/s. Rajkham Builders Private Limited and he is the Managing Director of the both the companies.
- (2) Since the defacto complainant was in need of money, he borrowed a sum of Rs.1,70,00,000/- from the revision petitioners and also created a simple mortgage by deposit of title deed dated 20.01.2022 and the same was registered as document No.230/2022 dated 21.01.2022 on the file of the Sub Registrar Office, Kodambakkam.
- (3) When the defacto complainant approached the revision petitioners/accused to redeem the mortgaged properties, they demanded a sum of Rs.40 lakhs towards interest and thus charged an exorbitant rate of interest.
- (4) Based on these allegations, an FIR in Crime No.258/2022 was



CrI.R.C. No.899 of 2023

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S. No.	Doc. No.	Date of Document	Nature of the document	Executed by	In favour of
1.	5788/1981	30.09.1981	Simple Mortgage deed	Noorjahan Bibi & another	The Nungambakkam Saswatha Dhana Rakshaka Nidhi Ltd.
2.	2035/1983	25.07.1983	Simple Mortgage deed	Noorjahan Bibi & another	The Nungambakkam Saswatha Dhana Rakshaka Nidhi Ltd.
3.	2728/1985	30.08.1985	First Simple Mortgage deed	Noorjahan Bibi & another	Parvathiraman
4.	243/1989	26.04.1989	Power of Attorney	Mrs. M.Noorjahan Bibi	Mr. Haja Mohideen
5.	2465/1995	04.05.1995	Receipt	Parvathiraman	M.Noorjahan Bibi
6.	2536/1995	08.05.1995	Simple Mortgage deed	Noorjahan Bibi & another	Ineian Members Benefit Fund Ltd.
7.	1493/2002	19.04.2002	Receipt	Ineian Members Benefit Fund Ltd.	Noorjahan Bibi & another
8.	1733/2002	09.05.2002	Sale deed	Noorjahan Bibi & another	Mrs. Nirubarani
9.	1734/2002	09.05.2002	Sale deed	Noorjahan Bibi & another	Mr.T.Muthu Vijayan
10.	CA No.1084 / 80-81	06.07.1981	Extract from permanent Land Register	Tahsildar Egmore- - Nungambakkam Taluk	Noorjahan



Crl.R.C. No.899 of 2023

11.	CA No. 242/02-03	20.02.2023	Extract from Town survey Land Register	Tahsildar Egmore- - Nungambakkam Taluk	Nirubarani & T.Muthu Vijayan
12.	230/2022	21.01.2022	Agreement relating to deposit of title deeds.	Muthu Vijayan & Niruba Rani	Vinay Asrani

The above documents were filed before the Metropolitan Magistrate, For Exclusive Trial of CCB cases (relating to Cheating Cases in Chennai) and CBCID Metro Cases, Egmore, Chennai-8 under form 95.

(5) Thereafter the 2nd respondent/defacto complainant filed a petition under Section 451 r/w 457 Cr.P.C in Crl.M.P. No.3557/2023 before the trial court seeking return of documents seized from the revision petitioners/accused by the police. The said petition was partly allowed by the learned Metropolitan Magistrate, Exclusive Trial of CCB cases (relating to Cheating Cases in Chennai) and CBCID Metro Cases, Egmore, Chennai 600 008, vide her orders dated 20.04.2023, by returning the documents 1 to 11 on the following conditions:



Crl.R.C. No.899 of 2023

"(1) The petitioner is hereby directed to the produce the certified copy of the said documents before this court.

(2) The petitioners shall produce the said documents before this Court as and when required."

As far as document No.12 is concerned, it was dismissed by the trial court on the ground that it is only a photostat copy .

4. Aggrieved over the orders passed by the trial court, the revision petitioners/accused have filed the present Criminal Revision.

5. Heard Mr.P.V.Balasubramanian, learned Senior Counsel Assisted by Mr. K. Jayaraman, learned counsel for the petitioners, Mr.R.Vinothraja, learned Government Advocate (Crl. Side) for the 1st respondent and Mr.R.Vivekananthan, learned counsel for the second respondent.



CrI.R.C. No.899 of 2023

WEB COPY

6. Mr.P.V.Balasubramanian, learned Senior Counsel Assisted by Mr. K. Jayaraman, learned counsel for the petitioners, contended that the Metropolitan Magistrate, Exclusive Trial of CCB cases (relating to Cheating Cases in Chennai) and CBCID Metro Cases, Egmore, Chennai 600 008, ordered return of the original documents 1 to 11 to the defacto complainant though all those documents were executed by the defacto complainant at the time of availing a loan of Rs.1,70,00,000/- from the revision petitioners. His further contention is that the revision petitioners had filed a suit in C.S.No.48/2023 before this Court for recovery of a sum of Rs.2,70,00,000/- due under the mortgage deed executed by the defacto complainant together with interest at the rate of 1.70% per month. The said suit is pending before this Court. His specific contention is that the Tamil Nadu Prohibition of charging the exorbitant Interest Act 2003 would not apply to the loans made based on a promissory note exceeding Rs.10,000/- and that the scheme of Act is only to regulate and prohibit the collection of exorbitant interest in the name of daily vatti, hourly vatti, kandhu vatti, meter vatti and thandal. The learned trial court judge, without taking this aspect into



CrI.R.C. No.899 of 2023

WEB COPY

consideration, had returned the original mortgage deeds and promissory notes to the defacto complainant who is the borrower. He therefore prayed for setting aside the order passed by the trial court.

7. This court at the time of admitting the case granted an order of interim stay on 25.05.2023. On 26.06.2023 my learned predecessor had directed the defacto complainant to deposit the loan amount as decided by the trial court on or before 15.07.2023 and extended the order of interim stay passed by this court on 25.05.2023. It is pertinent to point out that the trial court had not decided anything about the amount to be paid by the defacto complaint to the accused (revision petitioners).

8. It is shocking to note that based on the complaint given by the defacto complainant, who borrowed a sum of Rs.1,70,00,000/- from the revision petitioners by way of executing a registered simple mortgage deed by deposit of title deeds, the 1st respondent police had registered an FIR in Crime No.258 of 2022 against the present revision petitioners and seized all the original documents pertaining to the loan transaction and



Crl.R.C. No.899 of 2023

WEB COPY

the learned trial court judge had gone to the extent of returning all the original documents to the defacto complainant who is the borrower on two conditions as stated above. The petition in Crl. M.P. No.3557/2023 for return of documents was filed by the 2nd respondent/defacto complainant subsequent to the filing of C.S. No.48/2023 by the revision petitioners. This is evident as per the orders in A.No.1267/2023 in C.S.No.48/2023.

9. The learned single judge of this Court (Justice R.N.Manjula) vide her orders dated 03.07.2023 in A. No.1267/2023 in C.S. No.48 of 2023 had restrained the defacto complainant from creating any third party interest by utilising the title deeds obtained by him from the Metropolitan Magistrate, Exclusive Trial of CCB cases (relating to Cheating Cases in Chennai) and CBCID Metro Cases, Egmore, Chennai 600 008. The learned trial court judge had returned the original mortgage deeds and Promissory notes to the defacto complainant without taking into account the pendency of the suit filed by the present revision petitioners for recovery of amount due under the mortgage deed



CrI.R.C. No.899 of 2023

WEB COPY

and promissory notes. It is also seen from the records that the present revision petitioners filed a Criminal O.P. No.530/2023 for quashing the FIR in Crime no.258/2022 and the same is still pending before this court.

10. Mr.R.Vivekananthan, learned counsel appearing for the defacto complainant contended that the defacto complainant is ready to pay the principal amount of Rs.1,70,00,000/- before the Metropolitan Magistrate, Exclusive Trial of CCB cases (relating to Cheating Cases in Chennai) and CBCID Metro Cases, Egmore, Chennai 600 008 and that the order passed by the trial court is perfectly in order. According to him since the present revision petitioners charged exorbitant rate of interest, the police had rightly registered FIR and seized all the documents pertaining to the loan transaction between the defacto complainant and the revision petitioners.

11. It is pertinent to point out here that the defacto complainant did not file any suit for redemption of mortgage and the Magistrate cannot quantify the amount which has to be paid by the defacto



Crl.R.C. No.899 of 2023

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complainant to the the revision petitioners/accused 1 to 4. The order passed by the learned Metropolitan Magistrate, Exclusive Trial of CCB cases (relating to Cheating Cases in Chennai) and CBCID Metro Cases, Egmore, Chennai, is totally erroneous especially when the revision petitioners have filed a suit for recovery of amount due under the mortgage deed and promissory notes. In the circumstances, the Criminal Revision is liable to be allowed.

12. In the result,

- i. The Criminal Revision is allowed. Consequently connected miscellaneous petitions are dismissed.
- ii. the order dated 20.04.2023 passed in Crl.M.P. No.3557/2023 on the file of the Metropolitan Magistrate, For Exclusive Trial of CCB cases (relating to Cheating Cases in Chennai) and CBCID Metro Cases, Egmore, Chennai 600 008, is set aside.



CrI.R.C. No.899 of 2023

WEB COPY

iii. The learned Metropolitan Magistrate, For Exclusive Trial of CCB cases (relating to Cheating Cases in Chennai) and CBCID Metro Cases, Egmore, Chennai 600 008, is directed to get back all the documents from the defacto complainant within one week from the date of receipt of a copy of this order.

iv. The second respondent/defacto complainant is directed to submit all the original documents to the concerned court, failing which, the Magistrate is at liberty to take appropriate action against the defacto complainant in accordance with law.

17.08.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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Crl.R.C. No.899 of 2023

R. HEMALATHA, J.
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To

1. The Metropolitan Magistrate,
Exclusive Trial of CCB cases (relating to
Cheating Cases in Chennai) and CBCID Metro Cases,
Egmore, Chennai 600 008
2. The State Represented by
The Inspector of Police
CCB-I, Chennai.

Crl.R.C.No. 899 of 2023 &
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