IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2023

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

Crl.R.C.No.1287 of 2023

K. Sathish Kumar ...Petitioner

Vs.

State Rep. by
The Inspector of Police
T-6, Avadi Police Station
Avadi, Chennai 600 054 ... Respondent

Prayer : Criminal Revision filed under Section 397 r/w 401 Cr.P.C. against the order dated 30.12.2022 passed in C.M.P. No.4393/2022 on the file of Judicial Magistrate-II, Poonamallee, Thiruvallur District and direct the respondent to register the FIR.

For Petitioner : Mr.L.Infant Dinesh

For Respondent : Mr. R. Vinothraja, GA (Crl. side)

ORDER

Challenge is made to the orders dated 30.12.2022 passed by the Judicial Magistrate No.II, Poonamallee (FAC) in C.M.P. No.4393/2022.

2. The present revision petitioner filed a private complaint before the Judicial Magistrate No.II, Poonamallee (FAC), under Section 200 Cr.P.C. praying to refer the complaint to the Inspector of Police, T-6 Avadi Police Station, to register an FIR and investigate the case under Section 156(3) Cr.P.C.

3. The case of the complainant K.Selvakumar is as follows:

i. The accused Premkumar and his father Selvaraj, requested the complainant to lend a sum of Rs.25 lakhs to meet their urgent family expenses. Though the complainant informed the accused that he does not have that much money to lend, they persuaded him (complainant) to part with a sum of Rs.25 lakhs by assuring him that they are expecting several lakhs of rupees from investments in various companies.

ii. Since their request was acceded to, they requested the complainant to give his salary slip, PAN card, Aadhar card and bank statements to one Sivakumar to check his credit score and loan eligibility amount. The complainant reluctantly shared the copies of the abovesaid documents to the accused and the accused informed him that he is eligible to get a loan of Rs.25 lakhs. They further promised that they would mortgage their 3000 sq. ft. of land document as security and assured to repay the monthly EMI without any lapse.

iii. Believing the words of the accused, the complainant applied for bank loans in IDFC, HDFC and ICICI bank through the said Sivakumar, who was introduced to him by the accused, and obtained loan. From the loan amount, the complainant transferred Rs.17 lakhs to Prem kumar and remaining Rs.8 lakhs to his family members.

iv. Though the accused promised to pay the equated monthly instalments without any default, they did not keep up their promise. When the complainant enquired the accused in this regard, they started abusing him in filthy language and also threatened him with dire consequences.

v. The complainant thereafter filed a complaint before the Inspector of Police, T-6 Avadi Police Station. He did not take any action on the complaint preferred by the present complainant. Therefore, the complainant filed a petition in C.M.P. No.4393 of 2022, before the Judicial Magistrate Court No.II, Poonamallee (FAC), for directing the respondent police to register an FIR and investigate the case.

vi. The learned Judicial Magistrate No.II, Poonamallee (FAC) dismissed the said petition vide his orders dated 30.12.2022, by observing thus:

> *"Heard learned counsel for complainant. Complaint and enclosed documents perused. Allegation in complaint is that the petitiioner has given a sum of Rs.25 lakhs to the alleged accused by way of*

obtaining loan from the bank, on furnishing his salary slip, PAN card, Aadhaar card and Bank statement, the alleged accused promised to pledge their 3000 sq. feet and document as security purpose and assured to re-pay the monthly EMI. But, the alleged accused failed to pay EMI regularly for 6 months. This allegation is related to loan transaction and breach of contract, it does not come under the purview of criminal case. This loan transaction and breach of contract are civil in nature, by giving criminal colour to the civil dispute, the present complaint was instituted. Therefore, there is no prima facie for cognizable offence made out in this complaint. Hence, this petition deserves to be dismissed.

In the result, this complaint under Section 156(3) Cr.P.C. is dismissed."

vii.Aggrieved over the same, the present Criminal Revision is filed.

4. Heard Mr. L.Infant Dinesh, learned counsel for the revision petitioner and Mr. R. Vinothraja, learned Government Advocate (Criminal side) for the respondent.

5. Mr. L.Infant Dinesh, learned counsel for the revision petitioner contended that the accused Prem Kumar is the childhood friend of the complainant and that at his request, he (complainant) obtained a loan of Rs.25 lakhs from various banks and though his friend Premkumar and his father Selvaraj promised to repay the equated monthly instalments, they failed to do so and now the present complainant is unable to pay the equated monthly instalments. According to him, unless the police investigate the case by way of registering FIR against the accused, he cannot initiate any action against these accused as Premkumar's whereabouts are not known to anyone. The trial court judge had mainly dismissed the complaint on the ground that the allegations in the complaint are related to loan transaction and a

breach of contract and it would not come under the purview of criminal case.

6. Mr. R. Vinothraja, learned Government Advocate (Criminal side) for the respondent contended that the learned Judicial Magistrate No.II, Poonamallee (FAC), after perusing the documents filed by the complainant, had rightly dismissed the petition by observing that the loan transaction and breach of contract are civil in nature. Hence, no interference is warranted by this court and therefore, he prayed for dismissal of the present Criminal Revision Case.

7. The complainant in the instant case had filed various bank transactions between him and Prem Kumar and his family members. His specific contention is that on the promise made by Prem Kumar and his family members he obtained a loan for a sum of Rs.25 lakhs from IDFC, HDFC and ICICI bank. No doubt it is true that the present complainant can always file a civil suit to recover the amount from the accused. But it is stated that the complainant had transferred a sum of Rs.25 lakhs on various dates to the family members of the accused and according to him,

they promised to pay the equated monthly instalments for the loan availed by the present complainant and failed to pay the equated monthly instalments as promised by them. When the complainant confronted them, they threatened him with dire consequences by stating that they would engage hooligans and kill him. In the circumstances, the Inspector of Police, T-6 Avadi Police Station is directed to register an FIR and investigate the case in accordance with law on the complaint given by K.Sathish Kumar (present complainant).

8. In the result,

i. the Criminal Revision is allowed.
ii. The orders dated 30.12.2022 passed by the Judicial Magistrate No.II, Poonamallee in C.M.P. No.4393/2022, is set aside.
iii. the Inspector of Police, T-6 Avadi Police Station is directed to register an FIR and investigate the case in accordance with law on the complaint given by K.Sathish Kumar (complainant).

07.08.2023

Index: Yes/No

Internet: Yes/No
Speaking/Non-Speaking order

bga

To

1. The Judicial Magistrate No.II, Poonamallee.

2. The Inspector of Police
T-6, Avadi Police Station
Avadi, Chennai 600 054

R. HEMALATHA, J.
bga

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