



Crl OP No. 18640 / 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : **20.06.2023**
PRONOUNCED ON : **26.06.2023**

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition No. 18640 of 2019
and
Crl.M.P. No. 9463 of 2019

A. Krishnan ... Petitioner

Versus

1. The State Rep., by,
The Inspector of Police,
District Crime Branch, Salem,
Crime No.9 of 2017,
Salem District.

2. K. Jagadeesan ... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records relating to the Criminal Case in C.C. No. 465 of 2019 on the file of the learned Judicial Magistrate No.6, Salem, quash the same, in so far as the petitioner is concerned by allowing this Criminal Original Petition.

For Petitioner : Mr. N. Manokaran.

For Respondents : Mr. A. Damodaran,
Additional Public Prosecutor for R1.

Mr. S. Duraisamy



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for Mr. V. Elango for R2.

ORDER

The petition is to quash the final report in C.C. No. 465 of 2019 on the file of the learned Judicial Magistrate No.VI, Salem for the alleged offence under Section 420 of the Indian Penal Code and Section 4 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003.

2. It is alleged in the final report that the petitioner and his brother's son-in-law (A1) were involved in the money lending business; that the defacto complainant approached the accused for a loan of Rs.10,00,000/- and in order to secure the loan had executed sale agreement in favour of the petitioner in respect of the land to an extent of 2844 sq.ft., in S.No. 88/1B; that in the said sale agreement there is a clause that the defacto complainant can redeem the property by paying the loan amount; and that in the event of default, the sale deed would be executed in favour of the petitioner; that the first accused had demanded exorbitant interest and shared the interest with the petitioner; that the first accused had written the accounts in a notebook; and that the petitioner had not cancelled the sale agreement though the defacto complainant had paid Rs.45,00,000/-; that the petitioner had created a



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mortgage deed to the balance extent of 1404 sq.ft in the same survey number in favour of the petitioner as if it was executed by the defacto complainant and his wife by misusing the blank papers; that hence petitioner and the other accused are liable for the aforesaid offences.

3.(a) Mr. N. Manokaran, learned counsel for the petitioner submitted that the allegations in the final report are contrary to the terms of registered documents; that the defacto complainant cannot be allowed to contradict the terms of the registered documents; that the sale agreement only states that the sale should be completed within two years; that there is no option for redeeming etc., as alleged in the final report; that the petitioner had filed a Suit for specific performance after giving a pre-suit notice in O.S. No. 136 of 2017 on the file of the I Additional District and Sessions Judge, Salem; that after receipt of summons, the defacto complainant had filed the complaint which culminated in the impugned final report; that the said Suit was decreed exparte and the alternative prayer for refund of the advance amount was granted; that the second respondent and his wife had filed a petition to set aside the exparte decree and the same was allowed; that the petitioner filed C.R.P. No. 1995 of 2019 against the said order and has also filed a Suit in A.S.



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No. 87 of 2019 before this Court challenging the Judgment of the trial Court which had refused his prayer for specific performance; that both the Civil Revision Petition and the First Appeal were taken up for hearing by this Court and dismissed and this Court directed the trial Court to complete the trial within a period of six months; that since the said Suit is now pending, the claim of the second respondent which is contrary to the terms of the agreement and which is now subjudice before the trial Court, cannot be sustained.

(b)The learned counsel relied upon the Judgment of the Honourable Apex Court in *Thermax Limited and Others Vs. K.M. Johnny and Others* reported in (2011) 13 Supreme Court Cases 412 in support of the submission that where there is a flavour of civil nature and there is a huge delay in resorting to criminal proceedings, the same cannot be allowed.

(c)The learned counsel for the petitioner submitted that in any case, the allegation of charging exorbitant interest is only as against the first accused, and the second accused, who is the petitioner herein, cannot be allowed to face the prosecution in such circumstances.



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4. (a) Mr. S. Duraisamy, learned counsel for the second respondent and Mr. A. Damodaran, learned Additional Public Prosecutor submitted that the final report and the materials filed in support of the final report disclose the offences and the points raised by the petitioner has to be adjudicated only before the trial Court. The learned counsel submitted that the prosecution had collected the notebooks containing the details of interest charged by the first accused and hence, the correctness of those documents cannot be decided in this petition. Further, there is evidence to show that the petitioner also was involved in charging exorbitant interest as he had shared the interest amount with the first accused.

(b) The learned counsel further submitted that merely because there is a civil remedy, it does not bar the filing of a criminal case if the ingredients of the offences are made out. The learned counsel relied upon the Judgment of the Allahabad High Court in ***Jai Prakash Gupta Vs. State of U.P. And Another*** in Appl. No. 36722 of 2016 dated 29.01.2021, which had followed the Judgment of the Honourable Apex Court in ***Kamala Devi Agarwal Vs. State of West Bengal*** reported in ***AIR 2001 SC 3846*** in support of the submission that criminal



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prosecution cannot be thwarted merely because civil proceedings are pending.

5. This Court finds that the main submission of the learned counsel for the petitioner is that the allegation in the charge sheet is contrary to the terms of a registered document, and the validity of the said document has to be considered by the trial Court; and that in such circumstances, the criminal prosecution is unsustainable. However, this Court is of the view that it is not a case of execution of only a sale agreement. The allegation is that the petitioner has created a mortgage deed as if it was executed by the second respondent and his wife in favour of the petitioner. Therefore, even according to the petitioner, there was a loan. Therefore, the allegation that exorbitant interest was charged has to be adjudicated only before the trial Court. It is a case of the prosecution that the first accused had charged exorbitant interest and shared it with the petitioner. According to the learned counsel for the petitioner, he cannot be held liable for the act committed by A1. Whether A1 and A2/the petitioner herein had acted in connivance or whether the petitioner is innocent cannot be decided in the instant petition. Therefore, this Court is of the view that merely because a civil Suit is



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pending for specific performance in respect of a sale agreement, the instant prosecution cannot be thwarted, as admittedly, there is also a mortgage, according to the petitioner, and a loan has been granted to the second respondent. Therefore, this Court is not inclined to entertain this petition. However, the petitioner is at liberty to raise all his points before the trial Court and the trial Court shall decide the matter on merits without being influenced by any of the observations made in this order. Since the petitioner is an aged person, his personal appearance before the trial Court is dispensed with unless the learned Magistrate considers his presence necessary for the progress of the trial.

6. Hence, this Criminal Original Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed.

26.06.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To



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1. The Inspector of Police,
District Crime Branch,
Salem.
2. The Judicial Magistrate No.VI,
Salem.
3. The Additional Public Prosecutor,
High Court of Madras,
Chennai.

SUNDER MOHAN, J

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