BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 24.07.2023

Delivered On : 11.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl.O.P(MD).No.1857 of 2020

1.Mohamed Ali Jinna
2.Ragumath Nisha ...Petitioners

Vs

1.State Rep. by,
The Inspector of Police,
Sakkottai Police Station,
Sakkottai,
Sivagangai District.
(Crime No.293 of 2019)

2.State Bank of India,
Rep. by its Manager Mr.Natarajan,
Karaikudi Main Branch,
Sivagangai District.

3.The Inspector of Police,
EOW, Madurai. ...Respondents
(R3 is impleaded as per order of the Court dated 09.03.2023
in Crl.O.P.(MD)No.1857 of 2020 by RTJ)

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the records pertaining to Crime No.293 of 2019 on the file of the first respondent Police and quash the same as against this petitioners.

For Petitioners : Mr.K.K.Samy
For 1st Respondent : Mr.R.M.Anbunithi,
Additional Public Prosecutor
For 2nd Respondent : Mr.V.P.Rajan

ORDER

This petition is filed to quash the FIR in Crime No.293 of 2019 pending on the file of the first respondent.

2.According to the petitioners, the defacto complainant filed a complaint before the first respondent alleging that the petitioners/A1 and A2 availed cash and credit loan by mortgaging the immovable properties available in the modern rice mill. While inspection of the officials of the defacto complainant bank, the movable stocks available in the rice mill is less than declared one to bank and a part of the building was damaged and there was irregular in loan repayment. These aspects constituted criminal breach of trust, mischief and the petitioners committed loss and damages to the property, dishonestly. Therefore, the defacto complainant filed a complaint with the first respondent police. Based on the complaint, the first respondent registered FIR as against the petitioners herein under Sections 406, 420 and 427 of IPC.

3.In fact the defacto complainant earlier sent legal notice to the petitioners through its counsel dated 24.09.2019. After receipt of notice, the petitioners replied suitably through reply notice dated 28.09.2019. In the reply notice, the defacto complainant was duely informed all in detail and also assured to adhere the terms and conditions of the loan. Hence, there is no breach of trust on the part of the petitioners. In fact these petitioners availed loan on certain conditions and executed in memorandum of deposit of title deeds. As per memorandum of deposit of title deeds, the petitioners retained the mortgaged property with them. Further the petitioners paid the EMI to the defacto complainant from time to time. As drought prevailed last year, there was no work carried out to the full-fledged level and the gains received from the work was utilized for the payment of interest and paid the interest up to 1st July 2019 to the defacto complainant. While renewing memorandum of confirming the extension of the existing deposits of the title deeds, the defacto complainant mortgaged additional property as per value of their loan. Hence, this petitioners mortgaged sufficient immovable properties against the cash and credit loan availed with the defacto complainant and no damage caused to the bank. The petitioners have no intention to cheat the bank and none of the offences are made out and thereby, the FIR is liable to be quashed.

4.No counter was filed on the side of the respondents.

5.The learned counsel appearing for the petitioners has argued that the petitioners have availed loan from the second respondent bank and they are regularly paying the interest to the bank. Due to drought last year, there was some irregular in payment of loan. For that the second respondent gave a false complaint alleging that the petitioners damaged the property and not maintaining the stock and also committed the breach of trust. In fact the petitioners mortgaged the movable property and availed loan. They have no intention to cheat or commit any breach of trust as alleged in the FIR. The petitioners have renovated the building in one portion and due to drought, there was some irregular in payment and thereby, in order to recover the loan amount, the second respondent has filed this complaint and based on the complaint, the first respondent also registered FIR. During pending of this petition, the entire loan amount was paid to the bank and the bank also received the entire amount and now has no objection to allow this petition. Therefore, the above FIR is liable to be quashed.

6.The learned counsel appearing for the second respondent also admitted that the entire amount was settled by the petitioners and he has no objection to quash the FIR.

7.The learned Additional Public Prosecutor appearing for the first respondent argued that based on the complaint given by the second respondent, the first respondent has registered the FIR and thereafter, the mater has been settled between the parties. However he learnt that the matter has been referred to CBI but no records found to confirm that. Thereafter the learned Standing Counsel for CBI also appeared before this Court and represented that no order was passed by the Government or competent authority to transfer the case to CBI and no any order received regarding this case. However already matter was settled between the parties and entire loan was paid to the bank. Thereby, this Court has proceeded the case further.

8.This Court heard both sides and perused the materials available on records.

9.On perusal of records, it is observed that the second respondent has given complaint before the first respondent alleging that the petitioners obtained loan and mortgaged the properties and thereafter, irregular in payment and the petitioners also not maintained the stock as per the agreement. They damaged the building which were mortgaged to the bank through mortgage deed. Thereby, they committed breach of trust and committed mischief.

10.A perusal of complaint, it reveals that it is purely money dispute and further already the properties were mortgaged to the second respondent. It is admitted by both parties that notices were exchanged between the parties in respect of loan amount and thereafter, this complaint was lodged and registered FIR against the petitioners. There is no reference in the complaint and FIR as to how much of stocks have to be stored and how much of stock were maintained and further on reading of the complaint, it shows that due to non payment of loan, this complaint was given. However, during pending of this petition, the entire amount was paid by the petitioners, which shows the bonafideness of the petitioners. Even according to the contents of complaint, no offences are made out and there was no intention to the petitioners to cheat the bank from the inception . The petitioners had paid the previous installment amounts to the Bank and there was irregularity in repayment for some time. In view of the above, it is clear that the petitioners have no intention to cheat the second respondent and the present complaint was filed only to recover the unpaid loan amount. The date of loan was 2005 and thereafter, MOD was extended in the year 2018. Even according to the complaint, none of the offences are made out and in the complaint, there is no mention about the worth of the properties which alleged to have been damaged. The entire amount was also settled by the petitioners to the bank and the bank also has no objection. Thereby, this is a fit case to invoke the inherent jurisdiction of this Court under Section 482 of Cr.P.C.

11.In view of the above reasons, this Criminal Original Petition is allowed and the FIR in Crime No.293 of 2019 on the file of the first respondent Police is hereby quashed.

11.08.2023

NCC : Yes/No
Internet : Yes/No
Index : Yes/No
Mrn

To

1.The Inspector of Police,
Sakkottai Police Station,
Sakkottai,
Sivagangai District.

2.The Inspector of Police,
EOW, Madurai.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

P. DHANABAL,J.

Mrn

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