BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On: 25.04.2023

Delivered On : 02.06.2023

CORAM:

THE HONOURABLE MRS. JUSTICE R.THARANI

Crl.O.P(MD).No.1897 of 2020
and
Crl.M.P.(MD)No.958 of 2020

IDFC Bank Limited,
Represented by its,
Authorized Officer,
S.Arunkumar,
S/o.N.Shanumugasundaram,
Located at No.79/2, 1st Floor,
Rajabarly Complex, Bye pass Road,
Near Rathina Hospital,
Madurai. ...Petitioner

Vs

1.The Inspector of Police,
S.S.Colony Police Station,
Madurai.
2.Vijaya ...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the first information report in Crime No.1181 of 2019 on the file of the respondent Police and quash the same.

For Petitioner	: Mr.A.Sivasubramanian
For 1st Respondent	: Mrs.M.Aasha Government Advocate (Crl. Side)
For 2nd Respondent	: Mr.A.Kesavan

ORDER

This petition is filed to quash the FIR in Crime No.1181 of 2019, on the file of the respondent Police.

2.The allegation against the petitioner is that the defacto complainant availed loan from the LIC housing Finance Limited on 04.11.2003 and he approached the City Financial Consumer Finance India Limited to take over the loan, which was already availed by him and the City Financial Consumer Finance India Limited granted Rs.10,00,000/- in two loan agreements. One for Rs.6,38,000/- and another loan for Rs.3,62,000/-. The repayment period was fixed as 15 years. On 30.06.2011, the City Financial Consumer Finance India Limited assigned its loan to the future capital financial service limited now known as IDFC first bank the petitioner herein. The defacto complainant preferred a complaint before the respondent police as if the LIC agent, who initially arranged for the housing loan had instigated her for the takeover of the loan by the City Financial Consumer Finance India Limited and she has no knowledge that the loan was assigned to the petitioner. A case in Crime No. 1181 of 2019 under Sections 409, 420, 465, 471 r/w. 34 of IPC was registered against the petitioner.

3.On the side of the petitioner, it is stated that there is no material as against the petitioner for registering the case. The defacto complainant has availed a loan with City Financial Consumer Finance India Limited and she has signed the loan agreement and as per the clause 10.2, the lender shall have the right to create charge over the property in favour of another bank, institution or body by way of security for any refinance facility. The lender has the right to transfer or assign the mortgage over the property in favour of any bank, institution or body in connection with any sale or transfer of loan by lender to them. The defacto complainant has signed the loan agreement. She is bound by the agreement. Only with an intention to avoid repayment of the loan and to pressurize the financial institution, the defacto complainant has come forward with this complaint.

4.On the side of the petitioner, it is further stated that the assignment of the loan to the petitioner was intimated to the defacto complainant. The defacto complainant is aware of the assignment and that the allegation is baseless.

5.On the side of the second respondent, it is stated that in the year 2003, the defacto complainant got a housing loan from LIC for a sum of Rs. 4,50,000/-. The petitioner needed further funds and the LIC agent arranged another loan from the City Financial Consumer Finance India Limited. One for Rs.6,38,000/- and another loan for Rs.3,62,000/-. The interest was fixed as 12% and the EMI is to be paid for 180 months. Out of 180 months, the defacto complainant paid 168 EMIs. For a loan of Rs.10,00,000/-, the defacto complainant has made a payment of Rs.20,00,000/-. In the year 2019, the petitioner/A3 private finance company forced the defacto complainant to pay a further sum of Rs.10,00,000/- stating that the petitioner/A3 got the loan assigned to them from A2 and that they increased the rate of interest. The change of rate of interest was not informed to the defacto complainant. The alleged intimation letter was forged, which was not served on the defacto complainant. 15.3% rate of interest was fixed by the petitioner A3 and the change of rate of interest was not informed to the defacto complainant. Only after 14 years, the defacto complainant informed the change in the rate of interest. If informed earlier, the defacto complainant might have pre-closed the loan. Only when 12 EMIs are pending, the defacto complainant was informed that he has to pay Rs.9,00,000/- further.

6.On the side of the second respondent, it is further stated that only with the criminal intention, the change in the rate of interest was not intimated to the defacto complainant.

7.On the side of the prosecution, it is stated that the defacto complainant got a loan from LIC. A1 is the LIC agent. He arranged for the take over of the loan with A2. A2 assigned the loan to the petitioner/A3. Till 168 EMIs are paid, the defacto complainant was not aware of the assignment and she was not aware of the change in the rate of interest. All the accused have colluded together and they cheated the defacto complainant. When forgery was claimed by the defacto complainant, a trial is necessary. When the loan was assigned to the petitioner/A3, A2 had added extra Rs.3,00,000/- further to the loan. Though A2 and A3 are bankers, they indulged in illegal practice.

8.It is seen that the defacto complainant obtained a loan of Rs. 4,50,000/- from LIC of India and then the loan was taken over by A2. For a sum of Rs.10,00,000/-, the repayment period was fixed as 180 months. Later the loan was assigned to the petitioner/A3. It is stated that the defacto complainant has repaid 168 installments and only then she was informed that she has to pay a balance of Rs.9,00,000/-. For a loan of Rs.10,00,000/-, the defacto complainant has paid Rs.20,00,000/- and she has to pay a further sum of Rs.9,00,000/-. The case of the defacto complainant is that the change of interest was not intimated to the defacto complainant. The allegation against A1 is that he colluded with A2 and instigated the second respondent for the

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Mrn

take over of the loan by A2. The allegation against A2 is that when loan was assigned to the petitioner/A3, an additional sum of Rs.3,00,000/- was added in the loan account of the defacto complainant. The allegation against the petitioner/A3 is that rate of interest was increased from 12% to 15.3% and the same was not intimated to the defacto complainant and that the intimation letter was forged by the petitioner/A3. An offence of forgery, that too against financial institutions is serious in nature and the same requires a trial.

9.In view of the above, this Criminal Original Petition is **dismissed**. Consequently, connected miscellaneous petition is closed.

02.06.2023

NCC : Yes/No
Internet : Yes/No
Index : Yes/No
Mrn
To
1.The Inspector of Police,
S.S.Colony Police Station,
Madurai.
2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Crl.O.P(MD).No.1897 of 2020