BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 19.04.2023

Delivered On : 01.06.2023

CORAM:

THE HONOURABLE MRS. JUSTICE R.THARANI

Crl.O.P(MD).No.13816 of 2021
and
Crl.M.P.(MD)No.7182 of 2021

E.Harroon Natharsha ...Petitioner

Vs

1.The State rep. By its,
The Inspector of Police,
City Crime Branch,
Tirunelveli District
Crime No.14 of 2019
2.N.A.Ameen Abdulkadhar ...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the records pertaining to the FIR in Crime No.14 of 2021 on the file of the first respondent Police and quash the same against the petitioner as illegal.

For Petitioner : Mr.J.Jeyakumaran
For 1st Respondent : Mr.M.Veeranthiran
Government Advocate (Crl. Side)
For 2nd Respondent : Mr.R.Anand

ORDER

This petition is filed to quash the FIR in Crime No.14 of 2021 on the file of the first respondent.

2.The case of the prosecution is that the petitioner is running a mobile retail shop under the name and style of 'A to Z' at Tirunelveli Junction. A2 is the wife of A1. The petitioner agreed to sell the property in Door no.19, Vasantha Nagar, Kokkirakulam, Tirunelveli to the defacto complainant for a sum of Rs.1,17,50,000/- and on 22.09.2020, the complainant paid an advance of Rs.10,00,000/- to the petitioner through a cheque drawn at the Axis bank. On 25.09.2020, the complainant paid Rs.11.00,000/- through RTGS to the account of A2 and paid Rs.4,00,000/- in the account of A2 through bank deposit. On 24.09.2020, the defacto complainant deposited Rs.12,50,000/- in the name of the petitioner in HDFC Bank, Tiurnelveli. On 24.09.2020, the complainant deposited Rs.10,00,000/- in account of A3 in the Indian Bank. On 24.09.2020, the complainant deposited Rs.15,00,000/- in the account of A4 through KVB Bank and that on 24.09.2020, the defaco complainant deposited Rs.10,00,000/- in the account of A6 in the Central Bank. On 24.09.2020, the defacto complainant deposited Rs.10,00,000/- in the account of A7 in Indian Bank. On 24.09.2020, the defacto complainant deposited Rs.

10,00,000/- in the account of A8 in Indian Bank. There was a sale agreement on 22.09.2020 but the petitioner after receiving sale consideration, did not execute the sale deed and a case in Crime No.14 of 2021 under Sections 406, 418 and 420 of IPC was registered against the petitioner and the other accused.

3.On the side of the petitioner, it is stated that the petitioner borrowed a sum of Rs.21,00,000/- from the defacto complainant. The defacto complainant obtained signature of the petitioner in Rs.20/- stamp paper and green sheets and blank cheques and he received the original sale deed in respect of property. Due to repeated threatening by the complainant, the petitioner lodged a complaint before the Inspector of Police, Medical College Police Station, Tirunelveli in C.S.R.No.185 of 2020 and thereafter, the petitioner sent a legal notice to the defacto complainant. The petitioner filed a civil suit in O.S.No.293 of 2020 before the Sub Court, Tirunelveli. While so, the defacto complainant filled up the stamp papers, as if the petitioner agreed to execute a sale deed and he lodged the present complaint by suppressing the above complaints. The petitioner has filed a petition before this Court in Crl.O.P.(MD)No.13415 of 2020, seeking a direction not to harass the petitioner and the said petition is pending and prayed that the FIR is to be quashed.

4.On the side of the petitioner, it is stated that the FIR is not legally sustainable. FIR is an abuse of process of law. At the time of enquiry, the defacto complainant was not able to show any document for the alleged cheating. The entire amount was already collected by one Santhanakumari and the borrowed amount was deposited in the bank account, which was jointly operated by the defacto complainant and his wife and they swindled the entire amount. The petitioner is no way responsible for the alleged occurrence.

5.On the side of the petitioner, it is stated that totally eight accused were involved in the case. The petitioner is A1, A2 is wife of A1. The other petitioner are employees of A1. The petitioner is having a house property, which was mortgaged with the bank. There was loan transaction between the petitioner and the defacto complainant. The entire loan amount was already paid. Only to settle the bank loan, a sum of Rs.21,00,000/- was borrowed from the defacto complainant. At the time of borrowing the loan, the petitioner signed stamp paper, green papers and blank papers and the stamp paper was created as the sale agreement. The defacto complainant did not pay the loan amount to the bank. The petitioner has filed a suit in O.S.No.293 of 2020 for a relief of return of the original documents. A petition for a relief of injunction in I.A.No.2 of 2020 was dismissed by the trial Court. Against the same, the petitioner filed an appeal in C.M.A.No.25 of 2022 and the first appellate Court allowed the petition. The defacto complainant is taking three different stands regarding the sale consideration and the balance to be paid. A criminal case for execution of a sale deed is not maintainable. A civil case was converted into the criminal case. Even before the filing of the FIR, it was the petitioner, who approached the civil forum for a relief and the petitioner approached this Court for a direction not to harass the petitioner.

6.The learned counsel for the petitioner would rely upon a judgment of the Hon'ble Supreme Court in the case of ***Commissioner of Police and others v. Devender Anand and others*** reported in ***2019 (3) MWN (Cr.) 98 (SC)***, wherein it is stated as follows:

> *"Having head the learned counsel appearing on behalf of the parties at length and considering the material on record, we are of the opinion that the criminal proceedings initiated by respondent no.1 – original complainant is nothing but an abuse of the process of law for settling a civil dispute."*

7.On the side of the prosecution, it is stated that the petitioner borrowed some loan in the Axis Bank. He failed to repay the same and the house was to be sold by the bank. A1 requested the defacto complainant to settle the loan amount. It is stated that within a period of four days, the defacto complainant has deposed that Rs.1,17,50,000/- to the account of A1 to A8. Next day, the amount was transferred to the account of the petitioner. The defacto complainant through the account of the petitioner and through the account of the other petitioner, transferred the sale consideration and the loan was settled by the petitioner. After receiving the amount from the defacto complainant, the petitioner refused to execute the sale deed. The 8th accused is in abroad and the investigation is almost over and the prosecution is ready to file a final report.

8.On the side of the second respondent, it is stated that A1 and A2 are husband and wife. A6 is partner of A1 and the others are employees of A1. During September 2020, the petitioner approached the complainant and informed him that he is ready to sell his property and that there was loan in the SBI and SARFAESI proceedings was initiated. The sale amount was fixed as Rs.25,00,000/- percent. The petitioner executed a sale agreement on 22.09.2020. Rs.10,00,000/- was paid as advance and balance of Rs.

1,07,50,000/- is to be paid before the complainant. The balance of Rs. 25,00,000/- to be paid by the Sub Registrar, at the time of registration of the sale deed. On 22.01.2020, the petitioner furnished the land details. On 25.09.2020, the defacto complainant transferred Rs.11,00,000/- in the name of A2. On 23.09.2020, the defacto complainant transferred Rs.10,00,000/- in the name of A3. It is stated that within a period of four days, the defacto complainant has deposed that Rs.1,17,50,000/- to the account of A1 to A8. Next day, the amount was transferred to the account of the petitioner.

9.On the side of the second respondent, it is stated that all the other accused transferred the amount to the account of the petitioner and that the entire amount was transferred to the account of the petitioner. After receiving the payment, the petitioner cheated the defacto complainant. The entire bank loan of the petitioner was paid with that amount. After the Bank loan was settled, the original document were given to the petitioner and the same was handed over to the defacto complainant on 14.10.2020. This clearly shows that the documents were not handed over on the alleged date of borrowal that was on 22.09.2009 or on 25.09.2009. There is no possibility of handing over the original documents when they were deposited in the bank.

10.It is further stated that on the next day, when the defacto complainant called the first petitioner for registration of the sale deed, the petitioner gave a police complaint against the defacto complainant. On 27.10.2020, the defacto complainant was called for an enquiry and then the first petitioner filed a suit in O.S.No.293 of 2020 on 11.11.2020 as if the first petitioner borrowed a sum of Rs.21,00,000/- and he was ready to repay the same but the complainant refused to return the original document. The petitioner has filed a petition in Crl.O.P.(MD)No.13415 of 2020 not to harass him.

11.On the side of the second respondent, it is further stated that on the date of hearing, the petitioner asked for mediation. In the mediation, he did not turn up. The defacto complainant filed the suit in O.S.No.420 of 2022 for return of the original documents, which is pending before the learned Principal District Judge.

12.It is further stated that it is wrong to state that the petitioner borrowed Rs.10,00,000/- on 22.09.2020 and Rs.11,00,000/- on 25.09.2020 and he handed over cheque leaves and Rs.25/- stamp papers and the original documents on that date. No such original document was handed over to the defacto complainant on the date of sale agreement. Only after the bank loan was settled, the original document were received by the first petitioner and the same was handed over to the defacto complainant. Only on the instructions by the petitioner, the defacto complainant deposited money in the account of the wife of the petitioner and the employees of the petitioner. It is clear case of cheating. Only with an intention to defraud, the petitioner received a sum of Rs.1,17,50,000/-. The original challan for payment was also retained by the defacto complainant.

13.The learned counsel for the second respondent would rely upon a judgment of the Hon'ble Supreme Court in the case of ***Neeharika Infrastructure Pvt. Ltd., v. State of Maharasthra and others*** reported in ***2021 SCC Online SC 315***, wherein it is stated as follows:

> *" When a prayer for quashing the FIR is made by the alleged accused, the court when it exercise the power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR."*

14.On the side of the petitioner, by way of reply, it is stated that the intention of cheating is not existing. The petitioner has approached the civil forum and he attempted to return back Rs.21,00,000/-. Even as per the sale agreement, a sum of Rs.4,00,000/- is yet to be paid. The defacto complainant is wrong in claiming that the entire sale amount was already paid. Transferring amount to some other account is not binding on the petitioner.

15.A perusal of the records reveals that the defacto complainant has transferred various amount in the account of the petitioner and other accused. Within a period of two months, a sum of Rs.1,17,50,000/- was transferred to the account of the petitioner and others and on the very next day, the entire amount was transferred to the account of the petitioner and with that amount, the bank loan was settled. Subsequently, after receiving the original records from the bank, the original records were handed over to the defacto complainant. Whether the first petitioner borrowed a sum of Rs.21,00,000/- from the defacto complainant, whether he repaid the amount, whether the alleged sale agreement is genuine, whether the amount transferred to the name of A2 to A8 is connected with the petitioner are to be decided only after the completion of the trial. The allegation is serious in nature and it requires a detailed and complete trial.

16.In the above circumstances, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

01.06.2023

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

To

1.The Inspector of Police,
City Crime Branch,
Tirunelveli District.

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

R. THARANI,J.

Mrn

Crl.O.P(MD).No.13816 of 2021

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