IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.07.2024	Pronounced on: 19.07.2024

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.7095 of 2023
& Crl.M.P.Nos.4450 & 4453 of 2023

1. Ajith Kumar.
2. Padam Kumar.
3. Sarala. .... Petitioners/Accused Nos.1 to 3

/versus/

1. The State Rep. by
Represented by the
Inspector of Police,
District Crime Branch,
Chengalpattu District. .... 1st Respondent/Complainant

2. Mr.M.S.Senthil Kumar. .... 2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records to the C.C.No.879 of 2022 on the file of Judicial Magistrate-II Court, Chengalpattu, Kancheepuram and quash the same.

For Petitioners : Mr.Nithyaesh Nataraj,
for Mr.Vaibhav Rangarajan Venkatesh

For R1 : Mr.S.Udaya Kumar,
Government Advocate (Crl.Side).

For R2 : Mr.B.Ramesh Babu

ORDER

The petitioners are A1 to A3 in C.C.No.879 of 2022 on the file of Judicial Magistrate-II, Chengalpettu, Kanchipuram District and they face trial for the offences under Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act 2003 r/w Section 109, 384 and 420 of I.P.C.

2. The final report in the above case is based on a complaint given by one Mr.M.S.Senthil Kumar who is a Sub Authorised dealer of Yamaha Motor Bike at Chengalpet. As per his complaint, he borrowed money from the petitioners for his business purpose. He was forced to execute the sale deed of his property for not paying principal and the exorbitant interest demanded. His property worth Rs.7 Crores was grabbed by the petitioners for loan of Rs.1,70,00,000/- and interest. The petitioners gave Rs.3,22,00,000/- promising that, if the money is returned with interest within three months, they will reconvey the property. Believing their words, he paid Rs.56 lakhs as interest. When the defacto complainant was ready to repay the balance loan amount and informed the petitioners to receive the money and reconvey the property, they look away 137 new Yamaha Two wheeler and accessories worth

Rs.2,54,00,000/- kept in the showroom under the guise of takeover of business. After negotiation, on 11.08.2021, the 1st petitioner and its representatives paid Rs.25,27,500/- by way of demand draft and cash of Rs.4,72,500/-. Totally Rs.30,00,000/- and thereafter, Rs.50 lakhs.

3. Alleging that, initially the defacto complainant borrowed Rs.12 lakhs and executed documents in favour of one Kamal Bohra. He repaid it and subsequently, on the introduction of Kamal Bohra, the defacto complaint received Rs.1,70,00,000/- from Sarala/3rd petitioner through one Ajith Kumar. Thereafter, received Rs.3,22,00,000/- on executing the sale deed of his property worth Rs.7 crores with specific promise that the property will be reconveyed on payment of Principal and Interest. Further, he alleges that 137 Yamaha motor bike and accessories worth Rs.2,54,00,000/- was taken away from his showroom during the month of March 2021. After negotiation, he further received only Rs.80 lakhs on 11.08.2021.

4. The above said complaint been registered as per the direction of the Judicial Magistrate-II, Chengalpattu, on application of the complainant under Section 156(iii) of Cr.P.C. After investigation, the police has filed final report against the petitioners herein. Being aggrieved, the present petition is filed to quash the same.

5. The Learned Counsel appearing for the petitioners submitted that the complainant who was in financial crises was at the verge of closing his business and losing the dealership of Yamaha motor Bike. The petitioners, who are authorised Yamaha dealer for Guduvanchery, know the complainant for a long time as a dealer of Yamaha motor bike for Chengalpattu, Madurantakam, Acharapakkam. The defacto complainant approached the petitioners for financial help and offered to transfer his Yamaha dealership along with the property measuring 4303 sq.ft of land and buildings and the stock in trade. A "Business Transfer Agreement" was entered on 29.12.2020 between the defacto complainant, the father of the 1st petitioner and the 3rd petitioner. After paying an advance of Rs.15 lakhs, a sum of Rs.1,70,00,000/- was paid through Bank transfer. The stock in trade was valued at Rs.1,28,00,000 (Vehicles) + Rs.23,00,000/- (Spare parts) and it was communicated to the defacto complainant through e-mail on 08.02.2021. A partnership deed was executed between the defacto complainant Mr.Goutam Chand, father of the 1st accused and Sarala/3rd petitioner who is also wife of the 2nd petitioner/Padam Kumar.

Thus, existing business of M/s.SS Motors, a Sole Proprietorship of the defacto complainant was taken over by the partnership firm consisting of three partners each having 1/3rd share. The loan availed by the defacto complainant from Shinhan Bank was discharged by the petitioners and the property mortgaged by the defacto complainant was released from the mortgagee and transferred to the 1st accused and his family members on 08.02.2021 for valid consideration of Rs.3,50,00,000/-. Contending that the petitioners are not financiers as alleged in the complaint and no exorbitant interest demanded or collected, it is stated that transfer of business and sale of property was not for the repayment of money borrowed and interest but for valuable consideration, paid through Bank and cash. Hence, pray for quash of the complaint on the ground that, it is vexatious and malicious litigation through private complaints after the complaints to the police and higher Officials were closed as “mistake of fact” after due investigation.

6. Regarding allegation of removing of 137 Yamaha motor bike and spare parts, it is contended that it was part of the agreement between the defacto complainant and the petitioners while taking over the dealership and form part of the sale consideration made. On receipt of the consideration, the defacto complainant, on various dates had forwarded the details of stock list, stock valuation, sensitive confidential information of username and password credentials, Yamaha Portal pymdiol, Vahan Portal, Celax Portal, Wings Portal and Company Official Gmail, Facebook credentials etc. A sum of Rs.56 lakhs paid by the defacto complainant to the petitioners during the month of March 2021 is the sale consideration for the vehicles sold before the takeover. The petitioners before converting the Proprietor concern into Partnership Firm had funded for the purchase of those vehicles and after taking over the dealership of M/s.SS Motors, the vehicle which was sold through Vardhaman Motors & Kamedhenu Motors run by the petitioners and his family, the sale proceeds were credited into the account of M/s.SS Motors. Thus, a sum of Rs.56 lakhs transferred being the advance payment by customers for purchase of the vehicles.

7. Citing exchange of legal notice between them and the earlier police complaints given by the defacto complainant which were closed to resort to civil remedy, the Learned Counsel for the petitioners states that the defacto complainant contrary to the agreement to extort money illegally, after giving multiple police complaintd also blocked the portal and prevented the petitioners herein from dealing with the stocks in trade. Therefore, to by peace with specific understanding that all the police complaints has to be withdrawn, a sum of Rs.50 lakhs was paid to the defacto complainant in two installments on 23.08.2021 and 04.09.2021. While so, after receiving additional money as per the memorandum of understanding dated 10.08.2021, the defacto complainant failed to perform his part of contract. To harass the petitioners, the complaint in Crime No.334 of 2022 forwarded to the Chengalpattu District Crime Branch and without proper consideration of the law, final report been filed.

8. The Learned Government Advocate (Crl.Side) appearing for the State/1st respondent submitted that the defacto complainant was running business in the name and style of ***M/s.SS Motor Yamaha***, Pullipakkam Village, Chengalpattu, ***Sri Senthil Kumar and Company (Manpower Consultancy)***, Pullipakkam Village, Chengalpattu District and ***M/s.SSK Moto Private Ltd***, (Suzuki Authorised Dealer), Pullipakkam village, Chengalpattu District. The Kamal Bohra a financier in Chengalpet introduced the defacto complainant to A1 & A2 for financial assistance. From 1st accused, the defacto complainant has borrowed Rs.1,70,00,000/- for interest at the rate of 2% per month, on executing a Power of Attorney deed for a property at Kanchipuram. The said

Power of Attorney Deed was registered as Document No.2150 of 2019. The loan amount been transferred through RTGS from the account of 2nd and 3rd accused, namely, Padam Kumar and Sarala. The accused persons are not a registered money lenders. After borrowing Rs.1,70,00,000/-, the defacto complainant has not paid the principal or the agreed interest. For the repayment of the loan amount, the property of the defacto complainant at No.86/2A, GTS Road, Pullipakkam Village, Kanchipuram was transferred to A1, A2, A.Swapna Wife of A1 and Santhosh Bai wife of Gowtham Chand.

9. The investigation disclosed that the said transfer was on oral understanding that, if the loan amount is repaid with interest, the property will be reconveyed. The guideline value of the property is Rs.3,50,00,000/-, whereas, on investigation, the market value of the property assessed to be Rs.7 crores. At the time of transferring the property in the year 2021, the said property was under mortgage with Shinhan Bank for the loan availed by the defacto complainant. The accused persons redeemed the property discharging the loan with Shinhan Bank to a tune of Rs.2,70,73,959/-. The defacto complainant had subsequently received Rs.50 lakhs from the petitioners. Thus, for transfer of the property at Pullipakkam Village, Kanchipuram District, the loan of Rs.1,70,00,000/- (29.12.2020 – Rs.80,00,000/- ; 08.01.2021 – Rs.60,00,000/-; 12.01.2021 – Rs.30,00,000/-; Rs.2,70,73,959/- towards the discharge of Shinhan Bank debt and further, cash of Rs.50 lakhs). Totally, Rs.4,93,36,459/- been received by the defacto complainant.

10. The defacto complainant had come forward to repay the loan with interest and sought for reconveyance of the Pullipakkam Village property. A1 & A2 has refused to honour their promise. The vehicles were also taken forcibly from custody of the defacto complainant. In short, for a loan of Rs.1,70,00,000/- advanced for exorbitant interest and after collecting Rs.56 lakhs towards interest at the rate of 2% per month, the immovable property of the defacto complainant and the stock in trade were taken over under threat. Hence, offence under Section 420 of I.P.C, besides Section 4 of Tamil Nadu Prohibition of Exorbitant Interest Act r/w Section 109 of I.P.C and Section 384 of I.P.C been made out, final report been filed.

11. The Learned Counsel appearing for the 2nd respondent/defacto complainant submitted that due to the influence of the petitioners and money power, they were able to close the complaints given to the police with endorsement "Adviced Judicial Remedy" and only after the direction of the Judicial Magistrate-II, Chengalpattu, directed the police to register the complaint and the complaint been transferred to District Crime Branch, Chengalpattu for investigation. The investigation was done and final report filed based on the evidence collected.

12. Further, the Learned Counsel appearing for the defacto complainant submitted that taking advantage of the distress and crises in the business during Covid-19 period, the valuable property of the defacto complainant was snatched from him by false promise. Taking advantage of the blank signed papers and by muscle power, documents were created. Under the guise of transfer of business, the movable properties in the showroom along were removed. Since the prosecution has collected evidence for the commission of cognizable offence, pray to dismiss the petition.

13. Heard the Learned Counsels and records perused.

14. From the materials collected in the course of investigation, the prosecution is able to make out a case of money lending for exorbitant interest by the petitioners' family to the defacto complainant as early as 2019. The property of the defacto complainant alleged to be worth Rs.7 crores been transferred under the Document No.1536 of 2021 on 08.02.2021 for consideration of Rs.3,50,00,000/-. There are material evidence to show that the petitioners have paid Rs.2,70,73,959/- to Shinhan Bank to clear the debt of the defacto complainant and redeem the property. The e-mail communication between the defacto complainant and to the representatives of the petitioners reveals that the worth of 166 two wheeler as on 23.08.2022 was Rs.1,28,03,940/-. The defacto complainant consistently alleges that Memorandum of Understanding and deed of transfer of business were created by misusing signed papers. Even otherwise, there is a strong suspicion and *prima facie* case to proceed against these petitioners for the offence of collecting Exorbitant Interest for the money borrowed and offence of cheating.

15. The events and documents, as well as the informations revealed through exchange of notice between the parties, certainly does not indicate that it is pure civil transaction between buyer and seller. It is the loan transaction converted into sale of immovable property and also subsequent transfer of business. Whether the said transactions were really done with consensus between the parties or by duress been investigated by the police and they have concluded that those transactions and documents were not executed voluntarily but under duress. Since, *prima facie* material been made out for commission of cognizable offence, the respondent police had filed final report.

16. This Court, on scrutiny of the materials filed along with the final report, is of the view that the facts narrated are to be tested in the trial. It is not a case to conclude it as a pure civil dispute given a criminal colour or a money transaction converted into case of cheating. The materials relied by the prosecution need to be necessarily examined in the manner known to law. Since *prima facie* case is made out to take cognizance of the offence, it is not a fit case to quash.

17. Accordingly, the petition to quash the complaint in C.C.No.879 of 2022 stands dismissed. In fine, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

19.07.2024

Index :Yes.
Internet :Yes.

Speaking Order/Non-Speaking Order
bsm

To:-

1.The Judicial Magistrate-II Court, Chengalpattu, Kancheepuram.

2.The Inspector of Police, District Crime Branch, Chengalpattu District.

3. The Public Prosecutor, High Court, Madras.

DR.G.JAYACHANDRAN,J.

bsm

Pre-delivery order made in
Crl.O.P.No.7095 of 2023

19.07.2024