IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.08.2024	Pronounced on: 12.08.2024

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.18833 of 2024
& Crl.M.P.Nos.11123 & 11124 of 2024

1. Seenu.
2. Jayanthi. .... Petitioner/Accused 1 & 2

/versus/

1. The Sub Inspector of Police,
Bank Fraud Prevention Wing,
Central Crime Branch Group-31,
Chennai – 600 007. .... 1st Respondent/Complainant

2. K.S.Gopi Krishnan .... 2nd Respondent/defacto Complainant

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records in C.C.No.929 of 2024 on the file of Additional Metropolitan Magistrate Court for exclusive Trial of CCB Cases, Egmore and quash the same.

For Petitioner : Mr.P.L.Narayanan, Senior Counsel,
for Mr.E.Hariharan

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

ORDER

The petitioners herein are husband and wife. They both jointly applied for vehicle loan from Andhra Bank (now Union Bank of India) Chetpet Branch, Chennai for purchase of Audi Q5 car. A sum of Rs.54,50,000/- was sanctioned as loan on 17/01/2017. The Audi Q5 car bearing registration No:TN-10-AY-3334 was registered in the name of the first Petitioner on 18/01/2017. The car was hypothecated to the Bank and RC book along with a set of duplicate key of the vehicle was handed over to the Bank. The petitioners are supposed to pay E.M.I of Rs.88,240/- per month for a period of 84 months.

2. From 10/02/2017 upto 24 months the first petitioner paid the E.M.I. Thereafter, the first petitioner failed to pay the E.M.I. Hence, the loan was declared as NPA on 30/04/2019. Steps to take possession of the vehicle ended in futile since the first petitioner along with his family absconded. During the month of September 2019, the recovery team of the Bank found that the petitioner and his family are residing at No.10, Kalaignar Street, Bharathi Nagar, Katpadi. On enquiry, they found that the petitioner has sold the car to the third party and same could not be traced. The first petitioner admitted that, he borrowed Rs.13 lakhs to meet out his son’s medical expenses and gave the car as security to one Maharajan. When the petitioner approached the said Maharajan to repay the loan and get back the car, he came to know that the said Maharajan has sold the car to someone in Manipur.

3. Alleging that, the petitioner dishonestly sold the car which was under hypothecation with Bank and failed to repay the balance loan amount within 2 months as promised. The criminal complaint by the Senior Manager of the Andhra Bank was lodged on 26/12/2019 for the offences under Section 420 and 109 I.P.C against the first petitioner and his wife the second petitioner. The said complaint after due investigation ended in filing final report before the Additional Chief Metropolitan Magistrate Court, Egmore. The report of the Investigating Officer taken on file in C.C.No.929/2024.

4. The petitioners are before this Court to quash the final report on the ground that the loan transaction between the complainant Bank and the first petitioner is purely civil in nature. The default in payment of E.M.I was due to the sudden illness of the petitioner's son, who was seriously ill during the end of

2018. For the past 24 months, E.M.I was paid without any default. Due to sudden illness of their son, they were not able to pay the remaining E.M.I. However, a valuable property of the petitioner worth about Rs.90 lakhs is with the complainant Bank which was given as a security for the over draft facility of Rs.40 lakhs availed by the first petitioner for purchase of a land and building. Therefore, though the car hypothecated to the Bank is not with the petitioners, the loan advanced from them is well secured. Therefore, the failure to pay the due cannot be a cause for launching criminal prosecution.

5. According to the petitioners, the car purchased with the loan advanced by the complainant Bank was handed over to one Maharajan for urgent loan of Rs.13 lakhs. He while advancing the loan took signatures in blank papers and later sold the car to some third party at Manipur. The petitioner was in fact cheated by the said Maharajan. The first petitioner was one who involved in the loan transaction. The second petitioner was brought in as an accused by invoking Section 109 I.P.C, but there is no ingredient against the second petitioner to charge her under Section 109 I.P.C. The final report is devoid of any material to disclose dishonest intention from the inception. The third party, who purchased the car from the petitioner has not arrayed as an accused. The petitioners are made to face the criminal prosecution despite their readiness to pay the loan amount as early as in the year 2019.

6. The Learned Senior Counsel for the petitioners submit that the loan transaction with the Bank cannot be converted into a criminal case, for non-payment of the loan. There must be evidence to show that there was intention of cheating at the inception and the complainant was made to sanction the loan by deception. To attract offences under Section 420 I.P.C, the requisite ingredient is deception at the inception. In absence of the required ingredient, the C.C.No.929/2024 is liable to be quashed.

7. Further, the Learned Senior Counsel for the petitioners also contended that to attract offence under Section 109 I.P.C, the necessary ingredients like aid, abet or conspire are totally absent in this case, therefore, the second petitioner cannot be arrayed as an accused. To harass the first petitioner to whom the loan sanctioned, the complainant has included the name of the second petitioner, who is the wife of the first petitioner. The Learned Magistrate without any application of mind had taken cognizance of offence under Section 109 of I.P.C in spite of the fact neither in the complaint nor in the final report, no material placed how Section 109 I.P.C will get attracted.

8. The Learned Government Advocate (Criminal side) for the respondent referring the statements of witnesses recorded under Section 167 Cr.P.C contended that the petitioners jointly applied for the vehicle loan. The loan amount of Rs.54,50,000/- paid to the dealer directly and the vehicle was delivered on 18/01/2017. The first petitioner got the vehicle registered under his name. The petitioners have paid only 24 instalments out of 84 instalments. Without paying the balance instalments, they sold away the car under hypothecation with the Bank. When the recovery staff tried to contact the petitioners, they were not found in the address given. Later, after collecting details through their Aadhaar, found them near Katpadi. They admitting the alienation of the car which was under hypothecation, promised to repay the loan amount within period of 2 months, but failed to pay.

9. The petitioners who made joint application for vehicle loan were sanctioned loan of Rs.54,50,000/-. Though, the car was registered in the name of the first petitioner alone, the second petitioner is the guarantor and co-applicant for the loan. After availing loan, only 24 instalments were paid out of 84 instalments. Before clearing the loan, the car under hypothecation was sold away fraudulently with intention to cheat the Bank from recovering the due. Thus, the intention at the inception is clearly made out to hold both the petitioners guilty of offences under Section 420 and 109 I.P.C.

10. Heard the Learned Senior Counsel for the petitioners and the Learned Government Advocate (Crl.Side) for the 1st respondent. Records perused.

11. The material placed discloses the fact that the vehicle purchased from the loan amount advanced by the bank and hypothecated to the bank been sold away by the petitioners without clearing the hypothecation. Though, the petitioners claim that they were cheated by one Maharajan to whom they gave the car for availing loan of Rs.13 lakhs, the statements of the witnesses by name P.Iyyappan, Tirumalai, Maharajan and Tillai recorded under

Section 167 Cr.P.C during the course of investigation discloses that the car been used by the petitioners to avail loan and handed over to a financier at Thirunelveli. The loan availed from the private financier not been paid by the petitioners. The car is not traceable and from the statement of Tillai a used car vendor, it appears that the car has been sold to someone at Manipur.

12. If it is a case of mere loan and non-payment of loan, the Court can accept the plea of the petitioners that it is a pure civil dispute. But, the material relied by the prosecution discloses that it is not a case of mere failure to repay the loan but coupled with intentional removal of the property hypothecated to the Bank without the knowledge and consent of the Bank. The case of the prosecution is that both the petitioners jointly applied for the vehicle loan. The loan was sanctioned based on the repaying capacity of the applicants/petitioners as assessed by an independent agency by name, M/s.Gift Consultancy India (P) Ltd and the KYC documents, vehicle invoice, Financial Statements of the petitioners furnished along with the loan application dated 20/12/2016.

13. The grounds raised are not sustainable, to quash the complaint. Contrarily, the materials relied by the prosecution *prima faciely* sufficient to disclose commission of cognizable offence by both the petitioners.

14. As a result, this Criminal Original Petition No.18833 of 2024 is dismissed. Consequently, connected Miscellaneous Petitions Nos.11123 and 11124 of 2024 are closed.

12.08.2024

Index :Yes/No.
Internet :Yes/No.
Speaking Order/Non-Speaking Order.
bsm
To:-

1. The Additional Metropolitan Magistrate Court for exclusive Trial of CCB Cases, Egmore.
2. The Sub Inspector of Police, Bank Fraud Prevention Wing,
Central Crime Branch Group-31, Chennai – 600 007.
3. The Public Prosecutor, High Court, Madras.

DR.G.JAYACHANDRAN,J.

bsm

Pre-delivery order made in
Crl.O.P.No.18833 of 2024

12.08.2024