



CRL O.P. No.25690 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.10.2024

CORAM

The Hon`ble Mr. Justice P.DHANABAL

Crl. O.P. No.25690 of 2022

G. Venugopal S/o. T.T. Girirajan ... Petitioner / Accused
vs.

1. State represented by:-
The Inspector of Police,
Central Crime Branch, Team-2,
Egmore, Chennai-600 006.

2. Manjula D/o. Late Satya Narayanan Respondents

PRAYER: The Criminal Original petition is filed under Section 482 of Criminal Procedure Code to call for records pertaining to the proceedings in C.C. No.3567 of 2020 on the file of the Metropolitan Magistrate, CCB/CBCID Court, Egmore, Chennai and to quash the same.

For petitioner : Mr. John Sathyan, Senior Counsel
For Respondent : Mrs. G.V. Kasthuri,
Additional Public Prosecutor,
High Court, Madras [for R1]

Mr. V. Raghavachari
for Mr. K. Balasubramaniam [for R2]

ORDER



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This Criminal Original Petition has been filed by the petitioner to quash the proceedings pending on the file of the Metropolitan Magistrate Court for exclusive trial of cases under CCB / CBCID, Egmore, Chennai in C.C. No.3567 of 2020 for the offences under Sections 419, 465, 467, 468, 471 and 420 of IPC.

2. According to the prosecution case, the defacto complainant and the accused are husband and wife and they jointly purchased the property in the year 2008 and the same was mortgaged into the HDFC Bank, through joint loan account for a sum of Rs.84 lakhs. While so, due to misunderstanding between the parties, in the year 2014, they were separated and living separately. Already, FIR has been registered as against the husband of the defacto complainant and the same is pending before the Mylapore Police Station in Cr. No.11 of 2006 under 498(A) and 506(2) of IPC.

2.1. While so, on 12.09.2016, Staff of the HDFC Bank came to the defacto complainant and stated that on 22.07.2015, the husband of the



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defacto complainant obtained loan for a sum of Rs.35 lakhs and the defacto complainant was the co-applicant and there was default in payment of EMI, thereby requested to pay the said amount. Thereafter, she went to the bank and found that the husband of the defacto complainant forged the signature of the defacto complainant and filled the housing loan application form as co-applicant and also created the general power of attorney and thereby, he obtained loan of Rs.35 lakhs and thereby, she lodged a complaint before the respondent police and based on the complaint, they registered a case in Cr. No.15 of 2017 under Sections 419, 465, 467, 468, 471 and 420 of IPC and the same was investigated by the police and thereafter, they filed a final report as against the husband of the defacto complainant for the above said offences. The said final report has been taken on the file of the Metropolitan Magistrate, Special Court for exclusive trial of CCB / CBCID Cases, Egmore, Chennai and thereby, the said cognizance has been challenged thorough this petition.

3. The learned counsel appearing for the petitioner would contend



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that as per the prosecution, on 19.09.2016, the petitioner obtained a housing loan of Rs.35 lakhs on 22.07.2015 from HDFC bank by forging the signature of the 2nd respondent / defacto complainant and during that period, the defacto complainant and the petitioner were living separately. In fact, the petitioner along with his wife availed loan from the bank for a sum of Rs.83 lakhs in the year 2008 and have been promptly repaid the loan without any default. Thereafter, he again availed top-up loan in the very same loan account to the tune of Rs.35 lakhs on 13.07.2005 by executing necessary documents jointly by the petitioner and the defacto complainant in extension of mortgage on the property. Subsequent to the availing of loan, there are matrimonial dispute arose between the parties. Based on the false complaint given by the defacto complainant, he was arrested and remanded to judicial custody. The 1st respondent police have registered the complaint without conducting any enquiry and the petitioner had effected full payment for the above said loan availed by him and the loan was also closed. Therefore, the petitioner has filed this petition to quash the proceedings pending against him.

3.1. The learned counsel for the petitioner would further submit



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that already he filed a petition to quash the FIR in Crl. O.P. No.25455 of 2019 and the same was dismissed by this Court on 05.11.2019 stating that charge sheet has been filed before the Trial Court and thereby, liberty has been given to challenge the said charge sheet in accordance with law. Since there was no any prima facie material to continue the proceedings of the case, the petitioner has filed this petition before the learned Magistrate for discharge of the petitioner. However, the learned Magistrate dismissed the petition and thereafter, framed charges for the offences under Sections 419, 465, 467, 468, 471 and 420 of IPC on the sole ground that the petitioner had obtained top up loan of Rs.35 lakhs by forging the signature of the defacto complainant.

3.2. The petitioner has not committed any offence as alleged by the prosecution and due to the family dispute pending between the parties, the present complaint has been lodged and the averments in the complaint preferred by the complainant prima facie fails to stand the test of judicial scrutiny and without a spec of doubt can be inferred that the same is foisted with some devious objective. The learned Magistrate



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failed to consider that already the petitioner along with the 2nd respondent / defacto complainant obtained loan for the same property and after completion of the said loan, loan of top-up for want of Rs.35 lakhs that too with the consent of the defacto complainant and there is no intention to fraud or cheat the 2nd respondent and 2nd the respondent has filed a frivolous complaint only to take revenge for the matrimonial dispute pending between the parties and the 2nd respondent has also already lodged a complaint in respect of the matrimonial dispute and the same is pending. Therefore, without any prima facie materials, the trial Court has taken cognizance for the offences under Sections 419, 465, 467, 468, 471 and 420 of IPC and therefore, the cognizance taken by the learned Magistrate is liable to be quashed.

4. The learned counsel appearing for the 2nd respondent would submit that she already purchased the property jointly along with her husband/ petitioner and they availed housing loan jointly from the HDFC Bank for a sum of Rs.83 lakhs and thereafter, due to family disputes, they were separated and the petitioner has availed loan of Rs.35 lakhs and the

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same was not repaid and she came to know about the same through bank officials and thereafter, she came to know that the petitioner forged the signature of the defacto complainant and created forged power of attorney deed and also filed relevant applications before the bank by forging the signatures of the 2nd respondent. Therefore, she lodged a complaint before the concerned police and the police have also registered the FIR and thereafter, they conducted elaborate investigation and as per the investigation, there are prima facie materials available to proceed with the case as against the petitioner. Therefore, the petitioner is not entitled for any relief and he has to face the trial. Already he had challenged the FIR and the same was dismissed by the trial Court. Further, the petitioner has also filed a discharge petition before the trial Court and the same was also dismissed. The same has not been challenged. Therefore, the present petition is liable to be dismissed.

5. The learned Government Advocate appearing for the 1st respondent would contend that based on the complaint given by the 2nd respondent, they registered an FIR as against the petitioner in Cr. No.15



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of 2017 for the offences under Sections 419, 465, 467, 468, 471 and 420 of IPC. Thereafter, they elaborately investigated the case and as per the investigation, there are prima facie materials available to proceed with the case further and hence they filed final report as against the petitioner and based on the final report, the trial Court has taken cognizance for the offences under Sections 419, 465, 467, 468, 471 and 420 of IPC and now the case is pending. Already charges were framed as against this petitioner. Therefore, at this stage, the petitioner has to face the trial and hence the present petition is liable to be dismissed.

6. This Court heard both sides and perused the entire materials available on record.

7. It is an admitted fact that initially the loan was obtained by both the parties since the property was purchased jointly by the petitioner and the defacto complainant, thereafter, due to family dispute, they were separated and at the time of separation, the petitioner once again obtained loan from the HDFC Bank. According to the petitioner, the loan was



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only top-up and no any records created by him. According to the 2nd respondent, he created some documents by forging her signature. Thereby, he committed serious offences.

8. It is also an admitted fact that the 1st respondent conducted elaborate investigation and based on the investigation, they filed a final report as against the petitioner. The trial Court has also taken cognizance for the offences under Sections 419, 465, 467, 468, 471 and 420 of IPC after satisfying that there are prima facie materials available to proceed with the case as against the petitioner. Moreover, already discharge petition was filed by this petitioner and the same was dismissed by the trial Court and the trial Court has framed charges as against this petitioner for the offences under Sections 419, 465, 467, 468, 471 and 420 of IPC, but the order of dismissal of discharge petition and the framing of charges have not been challenged by the petitioner and without challenging the same, the petitioner now filed this petition to quash the proceedings. The allegations as against the petitioner are serious in nature and to be tested through trial.

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9. As per the prosecution, there are prima facie materials available as against this petitioner, thereby the trial Court has also taken cognizance and framed charges as against the petitioner and hence the petitioner has to face the trial and the statements of witnesses and the genuineness of documents have to be tested through trial, not at this stage and hence this petition has no merits and deserves to be dismissed.

10. Accordingly, the Criminal Original petition is dismissed. No costs. The connected miscellaneous petitions are closed.

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index: Yes/No
Internet: Yes/No
Speaking/Non Speaking order
mjs

To

1. The Metropolitan Magistrate, CCB/CBCID Court, Egmore, Chennai
2. The Public Prosecutor, High Court, Madras.
3. The Inspector of Police, Central Crime Branch, Team-2, Egmore, Chennai-600 006.

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