**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 11.03.2024**

**CORAM**

**THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH**

**CRL.O.P No.1523 of 2023**
**and Crl.MP.No.862 of 2023**

1.S.Mahendran
2.R.Shanmugapriya @ Priya Mahendran ...Petitioners/Accused 1 & 2

.Vs.

1.State rep.by its
Inspector of Police
District Crime Branch
Kancheepuram District.

2.A.Gandhi .. Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records relating to the FIR in Crime No.2 of 2022, on the file of the respondent police and quash the same as against the petitioner.

For Petitioners : Mr.A.Muthalakan

For respondents : Mr.A.Gopinath
Government Advocate (Crl.Side)
for R1

ORDER

This petition has been filed seeking to quash the FIR in Crime No.2 of 2022, pending investigation on the file of the 1st respondent.

2.The case of the de facto complainant is that during the year 2015, he approached the petitioners who are the husband and wife for loan to discharge his debt in LIC Housing Finance to the tune of Rs.10.5 lakhs and to meet out the medical expenses of his ailing wife. According to the 2nd respondent, the petitioners promised to clear his debt in LIC Housing Finance and to make the 2nd respondent as the partner in their new venture. This was done subject to the condition that he gave his property as a collateral security for the loan to be raised for the business development. The 2nd respondent was also made to believe that he will be paid high dividends towards the investment made by him. Thereby, the 2nd respondent had signed in several papers. Later, the petitioners did not make any payment to the 2nd respondent towards his share and the petitioners also created charge over the property belonging to the 2nd respondent without his knowledge. The 2nd respondent insisted for the repayment of the amount and for raising the charge from the property. The petitioners refused to do the same and they had also threatened the 2nd respondent with dire consequences. It is under these circumstances, the complaint came to be given by the 2nd respondent and an FIR came to be registered by the 1st respondent in Crime No.2 of 2022.

3.When the matter came up for hearing on 9.1.2024, the learned counsel for the petitioners submitted that already a compromise was arrived at between the petitioners and the 2nd respondent and the 2nd respondent had also given a consent affidavit to the effect that the dispute can be settled amicably. Hence, this Court posted the case under the caption 'for recording compromise'.

4.When the matter was thereafter listed for hearing on 5.2.2024, this Court passed the following order:

> *The defacto complainant was present before this Court. He admitted that he has received a sum of Rs.50,00,000/- from the petitioners. However, according to the defacto complainant, the petitioners owe him much more than what was stated and that he was put to threat and made to sign in the consent affidavit and the joint memo of compromise.*
>
> *2. If really the defacto complainant was put to threat and was made to sign in the consent affidavit and the memo of compromise, he would not have kept quiet. He would have made the complaint in this regard long back. After nearly one year, the defacto complainant is coming up with such a claim before this Court. It is admitted that the defacto complainant has already encashed Demand draft to the tune of Rs.50,00,000/-*
>
> *3. The learned counsel for the petitioner submitted that the attitude of the defacto complainant was also commented in the bail petition that was filed before this Court. The learned counsel for the petitioner shall produce the bail order during the next date of hearing. This Court will thereafter pass orders on merits.*
>
> *4.Post this case under the caption for orders on 11.03.2024. In the meantime, the investigation in Crime No.2 of 2022, shall remain stayed.*

5.When the matter was taken up for hearing today, the 2nd respondent, who was present before this Court once again reiterated that he was made to sign in the consent affidavit and the memo of compromise through coercion.

6.It will be relevant to take notice of the observations made by this Court while dealing with the anticipatory bail petition filed by the petitioners in Crl.OP.No.6285 of 2022. The relevant portions are extracted hereunder:

> *5.The learned counsel for the Petitioners submits that, the defacto complainant had suppressed several facts and had given the above false*

*complaint with concocted story. In fact, the defacto complainant voluntarily agreed to be part of the company run by these petitioners and expressed his willingness to provide his property as collateral security for running the company. He pledged his property in his personal name and availed loan and invested in the Company as one of the Directors of the company. Initially, Loan to a tune of Rs.1.15crores was borrowed from HDB Bank. Subsequently, for further loan, the same property was pledged with South Indian Bank, Madurai for Rs.2.60 crores and the loan due of Rs.1.40 crores with HDB Bank was settled. The balance amount was shared between the petitioners, defacto complainant, Annadurai and Thirumeni as per the wishes of the defacto complainant. For the due payable to South Indian Bank, all four are equally liable. The entire transactions are transparent and supported by the documents. The defacto complainant was inducted into the company as Director as early as 22/03/2013 and had executed documents in his personal capacity to raise loan as Director of the Company. While so, suppressing these facts with false and frivolous allegations, trying to wriggle out from his liability as one of the Directors by lodging this complaint by arm twisting.*

*6.The respondent police has filed counter in which it is stated that, from the investigation so far done it reveals that the defacto complainant availed loan from LIC Housing Finance for Rs.11,20,000/- pledging his house. To redeem the house, he approached the petitioners through one Sakthivel. With common intention to cheat the defacto complainant, they redeemed the property from LIC and also gave Rs.3 lakhs to the defacto complainant and retained the title document of the property and made the defacto complainant as one of the Directors of M/s Pranaav Televentures (P) Limited using the title document of the defacto complainant property for availing loan of Rs.1.15 crores from HDB Financial Services (P) Ltd in the name of M/s Pranaav Televentures (P) Ltd. After the loan amount credited into the account of M/s Pranaav Televentures (P) Ltd., except Rs.13,38,370/- was utilised to clear the LIC loan, without the knowledge of* *the defacto complainant, the remaining amount were withdrawn by the first petitioner through cheque. There is no evidence to show that the amounts were shared with the defacto complainant and others as claimed by the petitioners in the bail petition.*

*7.Thereafter, mortgaging the defacto complainant's house property, through the defacto complainant, loan for Rs.88 lakhs was raised from a Private Financier M/S GNR Enterprises, T.Nagar, Chennai. From that loan amount, the property mortgaged with HDB bank was redeemed, only to raise loan for Rs.2.60 crores from South Indian Bank. For this loan, apart from the house property of the defacto complainant, the properties of one Annadurai and Thirumeni also were given as collateral security. The Bank has intimated all the guarantors about the mortgage of their respective properties. On 16/04/2018, from the loan amount, Rs.1,43,00,000/- transferred to the defacto complainant account. Rs.21,50,000/- transferred to the first petitioner account. Rs.80,00,000/- transferred to Annadurai Account. That apart, the first petitioner has received Rs.31,50,000/-.*

*8.As of now, the loan due payable along with interest is Rs.5,63,90,910/-. The property of the defacto complainant with present market value of Rs.10 crores is now subjected to auction sale for recovery of the loan due of Rs.5,63,90,910/-.*

*9.The defacto complainant has filed petition to intervene and in his petition, he has stated that, initially to clear his LIC loan and for personal expenses, he agreed to receive Rs.3 lakhs in cash and Rs.10.61 lakhs to be paid to LIC for redeeming the property. Later, believing the words of the first petitioner mortgaged his property with HDB on 11/10/2013 for the petitioners to avail loan of Rs.1.15 crores. The MoU dated 11/01/2014 is a concocted document. The loan availed from M/s GNR Enterprises for Rs.88 lakhs and from Jayaraman Reddiar for Rs.32 lakhs on 06/04/2018 to clear the loan of HDB bank is to cheat the defacto complainant.*

*10.The defacto complainant in his intervening petition admits his participation and knowledge of the transactions involving his property.*

*This is contrary to his own complaint. Further, he admits that from the loan of Rs.2.60 crores availed from South Indian Bank, he was paid Rs.1.43 crores and from this amount he cleared the loan availed from the private financiers on 17/04/2018 .*

*11.Thus, it is clear from the own admission and from the material collected during investigation that the defacto complainant is part of the company which is in default in payment of the loan availed from South Indian Bank. He is an educated and retired Government Official. He had signed documents to be inducted as Director of the company and continue to be its Director since 2013. Several transactions and encumbrances on his property has taken place within his knowledge and participation all these years. He has now come with a story of cheating, concoction and fraud after 8 years, having admittedly received Rs.13,61,000/- initially to redeem the property from LIC Housing Finance and later Rs.1,43,00,000/- to clear the debts raised by mortgaging his property with GNR Enterprises and Jayaraman Chettiar.*

*12.In the said factual circumstances, the dispute between Directors cannot be given a criminal colour to settle the dispute. The forum for adjudication of these disputes is not the police station. Hence, this Court is inclined to grant anticipatory bail to the petitioners.*

7.The above order clearly brings out the conduct of the 2nd respondent in this case. That apart, the 2nd respondent after having received a sum of Rs.50,00,000/- from the petitioners had also given a consent affidavit and singed in the joint compromise memo and is now trying to wriggle out of his commitment by stating that he was coerced to put his signature. This Court has already observed in the previous order that such stand taken by the 2nd respondent is clearly an after thought and it is unbelievable that the 2nd respondent has not even given a complaint before any authority, if really he was threatened and was made to sign in the consent affidavit and the memo of compromise.

8.This Court is of the firm view that the 2nd respondent is virtually trying to give a criminal colour to a dispute which is purely civil in nature. That apart, the 2nd respondent is also trying to wriggle out of the earlier compromise entered into with the petitioners, wherein he received a sum of Rs.50,00,000/- from the petitioners by way of a demand draft.

9.Considering the facts and circumstances of the case, this Court does not find that any offence has been made out in this case. That apart, the attendant circumstances also shows that the complaint itself is an abuse of process of law.

10.It will be relevant to take note of the judgment of the Apex Court in **Mahmood Ali v. State of U.P.**, reported in **2023 SCC Online SC 950**. The relevant portions are extracted hereunder:

> ***13.*** *At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because*

*once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.*

11.It is clear from the above that it is the duty of the Court to weed-out vexatious proceedings by looking into the attending circumstances and interfere with the criminal proceedings. This is one such case where this Court finds the complaint given by the 2nd respondent to be frivolous/vexatious. Hence, this Court is inclined to exercise its jurisdiction under Section 482 of Cr.PC., and quash the FIR.

12.In the light of the above discussion, the FIR in Crime No 2 of 2022, on the file of the 1st respondent is hereby quashed and this criminal original petition stands allowed. Consequently, connected miscellaneous petition is closed.

11.03.2024

Index: Yes/No
Speaking Order/Non Speaking Order
kp

To

1.The Inspector of Police
District Crime Branch
Kancheepuram District.

2.The Public Prosecutor,
High Court of Madras,
Madras.

**N.ANAND VENKATESH.J.,**

kp

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**11.03.2024**