



CrI.O.P.(MD)No.2482 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **04.03.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

CrI.O.P.(MD) No.2482 of 2022

and

CrI.M.P.(MD).No.1835 of 2022

S.Pushpa Suja

... Petitioner

Vs.

1.State represented by
the Inspector of Police,
District Crime Branch,
Nagercoil,
Kanyakumari District.
(Crime No.83 of 2013)

2.Mr.Udhaya Kumar,
Branch Manager,
Tamil Nadu Mercantile Bank,
Rajakkamangalam,
Kanyakumari District.

...Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records in C.C.No.598 of 2020 on the file of the learned Judicial Magistrate No.I, Nagercoil and quash the same.

For petitioner : Mr.R.J.Karthick

For R-1 : Mr.S.Manikandan,
Government Advocate
(Criminal Side)

For R-2 : Mr.P.Pethu Rajesh



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ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.598 of 2020 on the file of the learned Judicial Magistrate No.I, Nagercoil.

2. The case of the prosecution is that Accused No.1 along with petitioner / Accused Nos.2 and 3 have availed business loan for the tune of Rs.18,00,000/- from the second respondent / Bank by submitting fabricated documents showing that Accused No.1 is the owner of the subject property. Hence, the second respondent made a complaint before the first respondent Police and the first respondent Police has registered a complaint in Crime No.83 of 2013 for the offence punishable under Sections 465, 468, 471, 420 r/w 34 IPC. Thereafter, the first respondent Police has conducted the investigation and on completion of investigation, they have filed a charge sheet in C.C.No.598 of 2020 before the learned Judicial Magistrate No.I, Nagercoil. Challenging the same, the present petition has been filed.

3. The learned counsel appearing for the petitioner would submit that Accused No.1 is the husband of the petitioner. He would further submit that initially they obtained a loan from the second



respondent and the entire loan was settled and thereafter, the petitioner's husband obtained another loan by producing some documents before the second respondent, for which, the petitioner has not signed in the loan application as guarantor and there is no money transaction between the petitioner and the second respondent / *defacto* complainant. He would further submit that the second respondent has unnecessarily roped the petitioner in this case and without any documents, implicated the petitioner herein as Accused No.2, which is not sustainable one. It was also brought to the notice of this Court the Judgment of this Court in the case of ***C.V.Mohan Prakash Vs. State represented by the Inspector of Police, East Police Station, Coimbatore and another*** in ***Crl.O.P.No. 22901 of 2016*** and special reliance was placed on the following findings:-

“16. The second respondent had knocked all doors to frustrate the legitimate actions taken by the bank to recover the money, lent to A1. He first went to the Debt Recovery Tribunal. He failed. He went to the Civil Court. He failed. He filed Writ Petitions. They were dismissed. He then gave a private complaint. That was also dismissed. He had then given a police complaint and a First Information Report had been registered. In the First Information Report, the auction purchasers



were named as accused. The First Information Report was quashed as against the said auction purchasers. The investigating agency, then named three other officials of the State Bank of India, as accused in the final report. The Calendar Case was quashed as against the said three officials.

17. I find no reason to permit continuation of the Calendar case as against the petitioner/A2 herein. He was just a bystander. He had no active role either in the sanctioning of the loan or in the recovery process. He incidentally happened to be the brother of A1, the borrower. That would not be a ground to face a criminal trial, which, viewed from any angle, would only be a torturous experience. The possibility of conviction is extremely remote. Continuation of the Calendar Case against the petitioner would only be an act of oppression

4. The learned Government Advocate (Crl. Side) would submit that there are materials available to proceed with the case as against the petitioner herein and at the threshold, the criminal proceedings cannot be quashed and the charges against the petitioner have to be gone into only at the time of trial and hence, he prayed for dismissal of the petition.



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5. The learned counsel appearing for the second respondent would submit that initially, the petitioner and her husband / A1 came to the second respondent's Bank and obtained loan by fabricating the documents to the tune of Rs.18,00,000/-. He would further submit that all those points raised before this Court is a triable issue, which cannot be canvassed before this Court and it can be canvassed only at the time of trial. Hence, he prayed for dismissal of this petition.

6. Time and again, this Court as well as the Supreme Court has cautioned the courts about the necessary precautions to be taken while quashing the charge sheet at the initial stage. Useful reference in this regard can be had to the decision of the Hon'ble Apex Court in ***State of Haryana – Vs - Bhajan Lal (1992 SCC (Crl.) 426)***, wherein, the Hon'ble Apex Court held as under :

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the



Code of Criminal Procedure, which we have extracted illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

..

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

..

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;”

7. It is seen that the petitioner herein is the wife of the first accused and there is no money transaction between the petitioner and the second respondent and moreover, she has not signed in the loan application as “guarantor”. Hence, this Court is inclined to quash the



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proceedings in C.C.No.598 of 2020 on the file of the learned Judicial Magistrate No.I, Nagercoil, insofar as the petitioner is concerned.

8. In the result, this Criminal Original Petition is allowed.

Consequently, connected miscellaneous petition is closed.

04.03.2024

Index : Yes/No

Internet : Yes/No

TSG

To

1.The Judicial Magistrate No.I, Nagercoil.

2.The Inspector of Police,
District Crime Branch,
Nagercoil, Kanyakumari District.

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



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M.DHANDAPANI. J.

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