



CrI.O.P.(MD)No.17752 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.11.2024

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P.(MD)No.17752 of 2021

and

CrI.M.P.(MD) No.9684 of 2021

R.P.Ganeshan @ Kothanar Ganeshan

... Petitioner/
Accused No.5

Vs.

1.State rep.by
The Inspector of Police,
Cumbum South Police Station,
Theni District.
(Crime No.307 of 2017)

... Respondent/
Complainant

2.Ilangovan

... Respondent/
Defacto Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records of impugned charge sheet in C.C.No.228 of 2019 on the file of the learned Judicial Magistrate, Uthamapalayam, Theni District and quash the proceedings against the petitioner as illegal.

For Petitioner : Mr.A.Navaneetharaja

For Respondents : Mr.B.Thanga Aravindh
Government Advocate (CrI.) for R1



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ORDER

This petition has been filed to quash the proceedings in C.C.No.228 of 2019 on the file of the learned Judicial Magistrate, Uthamapalayam, Theni District.

2.The second respondent gave a complaint to the first respondent police to the effect that he took loan from the petitioner and other accused persons and that they are insisting for payment of exorbitant interest and they are also causing threat to the second respondent and his family members and they were abused in filthy language. Based on this complaint, an FIR came to be registered in Crime No.307 of 2017 on 21.06.2017 against five accused persons. On completion of the investigation, the final report came to be filed before the Court below and it has been taken on file in C.C.No.228 of 2019. The petitioner has been arrayed as A5 in the final report and the same has been put to challenge in the present quash petition.



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3.Heard Mr.A.Navaneetharaja, learned counsel for the petitioner and Mr.B.Thanga Aravindh, learned Government Advocate appearing on behalf of the first respondent.

4.The second respondent has been served with notice and the name of the second respondent has also been printed in the cause list and there is no appearance either in person or through counsel.

5.On carefully going through the statement recorded from the second respondent under Section 161 of Cr.P.C., it is seen that he has made a bald/vague allegation against the accused persons as if he borrowed from them and they are insisting for payment of exorbitant interest.

6.The object of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 was dealt with by this Court in Crl.O.P.No. 4877 of 2018 batch cases and an order was passed on 26.06.2018. The relevant portions are extracted hereunder:-

“10.The object of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, is to



prohibit the charging of exorbitant interest by any person and matters incidental thereto. The scheme of the Act is to regulate and control collection of money in the name of daily vatti, hours vatti, kandhu vatti, meter vatti, thandal etc. As per the provisions of the Tamil Nadu Money Lenders Act, 1957, a money lender is a person whose main or subsidiary occupation is the business of advancing and realising loans. Further, an advance made on basis of a negotiable instrument exceeding Rs.10,000/-, will not fall under the definition of a loan. Therefore, a money lender, who makes an advance, on basis of a negotiable instrument exceeding Rs.10,000/- is not a person referred to under Section 3 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003. In other words, the debtor cannot lawfully complain of a demand of exorbitant interest, when a money lender advances a loan on the basis of negotiable instrument exceeding Rs.10,000/-.

11.As per the provisions of the Tamil Nadu Money Lenders Act, a money lender is a person, whose main or subsidiary occupation is a business of advancing and releasing loan. In the instant case, the petitioners main occupation was transport business and it is nobody's case that their main and subsidiary business was money lending. Therefore,



the term 'person' referred to in Section 3 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 and the term 'money lender' referred to therein are not applicable to the petitioners herein. Incidentally, the petitioners herein had produced various copies of their transport business pertaining to Port Trust Licence, Coir Board License, Export and Import License, Income Tax Returns etc., and established that their main business was not money lending. As such, the FIR implicating the petitioners for offences under Sections 3 and 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 is prima facie not made out.

12.It is the case of the petitioners that the defacto complainant had borrowed Rs.50 lakhs on an understanding that the same would be repaid with interest at the rate of 18% p.a. and had executed a deed of equitable mortgage on deposit of title deeds apart from other negotiable instruments. Though the learned Senior counsel made his submissions indicating that the defacto complainant was closely related to a high ranking police official and made false allegations in order to escape from his liabilities, I do not wish to go into these aspects as there is no material placed before this Court to establish the same. Even otherwise, what would be



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relevant in the present case is as to whether the offence under the Act has been clearly made out or not.

13.The basis of the complaint is that the petitioners herein had demanded exorbitant interest and it is in this connection that they had allegedly indulged in various criminal activities. When the offence under the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 has not been made out, what remains is a mere civil dispute between the petitioners and the defacto complainant since the amount borrowed as well as the non repayment of the same is not under dispute. It would not be out of place to mention here that under Section 51 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, it is mandatory that the debtor to deposit the loan amount together with interest at the rate fixed by the Government under Section 7 of the Act into the jurisdictional Court before presentation of the petition for recording satisfaction of the loan. This proposition has been reiterated in Indiabulls Financial Services Ltd., Vs. Jubilee Plots and Housing Private Limited reported in 2010 (2) LW 375 24.In the considered opinion of this Court, the word 'may' used under Section 5(1) of the Act would imply the option given to a debtor to approach the



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court with a petition to refer full or part satisfaction of the loan with interest. Once a debtor exercises his option to approach the court for such a purpose, a debtor, who presents a petition, is bound to deposit the money in respect of the loan received by him together with interest. Therefore, the expression 'may' employed under Section 5(1) does not mean by any stretch of imagination that deposit of money while presenting a petition is always at the option of a debtor. If such an import is given to the aforesaid provision of law, no debtor would be inclined to deposit the loan amount with interest to get a relief within the time frame fixed under Section 5(2) of the Act. Consequently, it would be a mockery if the debtor, who has not chosen to show his bona-fides by depositing the money due in respect of the loan with interest, is permitted to seek for a remedy by just filing a petition. The provision under Section 5(2) of the Act speaks of an inquiry and passing of an order recording the satisfaction of the loan and interest therefore in full or part. If the amount due in respect of the loan with interest therein is not deposited as contemplated under Section 5(1) of the Act, the court may not be in a position to record in full or part satisfaction of the loan.”



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7.It is clear from the above judgment that a debtor in order to claim the benefit under the Act must first resort to depositing the money in respect of the loan received by him with interest in line with Section 5(1) of the Act. Once the debtor exercises his option, his *bona fides* can be assessed by the Court. In the absence of the same, a debtor even without repaying the loan which was admittedly received by him can always keep giving complaints against the creditor on the ground that they are charging exorbitant interest.

8.In the case in hand, as stated supra, a bald/vague allegation has been made by the second respondent and the allegations made by the second respondent does not constitute an offence under Sections 3 and 4 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003.

9.Insofar as the offence under Section 506(2) of IPC is concerned, the allegations that have been made does not constitute an offence of criminal intimidation. Similarly, the offence under Section



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294(b) of IPC is also not made out since such abuse has not happened in a public place.

10.In the light of the above discussion, the continuation of the criminal proceedings as against the petitioner will result in abuse of process of law which requires the interference by this Court.

11.In the result, the proceedings in C.C.No.228 of 2019 on the file of the learned Judicial Magistrate, Uthamapalayam, Theni District, is hereby quashed insofar as the petitioner is concerned and accordingly, this Criminal Original Petition stands allowed. Consequently, connected miscellaneous petition is closed.

07.11.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
PKN



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To

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



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N.ANAND VENKATESH,J.

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