(2009) 08 MAD CK 0143

In the Madras High Court

Case No : Criminal O.P. No. 22966 of 2007 and M.P. No. 1 of 2007

A.L. Noor Mohamed APPELLANT

Vs

ICICI Bank Limited RESPONDENT

Date of Decision : 07-08-2009

Acts Referred:
Penal Code, 1860 (IPC) — Section 406, 420

Citation : (2009) 08 MAD CK 0143

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : D. Shivakumaran, for the Appellant; No appearance, for the Respondent

Judgement

C.S. Karnan, J.—The petitioner has filed the above Criminal Original Petition to call for the records relating to C.C. No. 3036 of 2007 from

the file of the III Metropolitan Magistrate Court, George Town, Chennai and quash the same.

2. The petitioner submits that he is a businessman and he has taken a personal loan of Rs. 3,09,000/- from the Respondent/ICICI Bank Limited in

the month of September 2004. As per the said loan agreement, the petitioner has to pay Rs. 12,609/- as monthly instalment for 36 months. The

petitioner remitted Rs. 2,20,000/- that was regular in payments. At the time of availing the loan, the petitioner issued cheques as security. The

cheques were dishonoured due to inadequate funds. Thereafter, the respondent Bank has filed a private complaint against the petitioner in C.C.

No. 3036 of 2007 on the file of the III Metropolitan Magistrate Court, George Town, Chennai for an alleged offence under Sections 406 and 420

of IPC alleging that the petitioner had criminal intention and in conspiracy had committed offences of cheating and misappropriation of money belonging to the respondent Bank.

3. The complainant clearly stated that the finance company has disbursed the personal loan on 16.09.2004, and that it is alleged the loan was granted for the purchase of car. There is a controversy and dispute over the loan category under which the loan has been advanced. Further, it is alleged by the complainant that the petitioner has cheated to the tune of Rs. 1,24,206/-. The petitioner submitted that reading of the complaint would show that there is no material to show that the element of cheating and misappropriation are made in this case. Further, the petitioner has alleged that he has made payment of over Rs. 2 lakhs towards the said loan amount. As such, Sections 406 and 420 will not be attracted. Further, the petitioner contends that the remedy lies with the Civil Court for recovery of arrears of loan. The petitioner has further alleged that he has not availed a loan of Rs. 3,49,000/- as alleged and that it was a top up loan which was already availed.

4. A fresh loan account was opened and after closing the old balance, it was recorded on the paper that a fresh personal loan of Rs. 3,49,000/- has been sanctioned to the petitioner. Further, the petitioner has written a letter on 04.04.2005 to the respondent Bank stating that he has cleared monthly instalments till March 2006 and due to the slack in business, he is unable to pay the dues promptly, but assured that he would repay the loan shortly. Further, the petitioner had sent another letter on 26.05.2006 and expressed his business difficulties and inability to pay the Bank dues.

The petitioner also pointed out that the respondent is collecting 48% interest which is attracted under the Tamil Nadu prohibition of Charging Exorbitant Interest Act, 2003. Further, the petitioner had sent another letter dated 31.07.2006 to the respondent bank wherein he had stated that the petitioner is coming forward to settle the loan with the respondent and that he is trying to get financial assistance from his friends and relatives to clear the said loan. On 31.07.2006, the respondent/complainant sent a letter to the petitioner and furnished the detailed statement about the loan particulars. Thereafter, the respondent/complainant filed the said complaint against the petitioner.

5. The ingredients of the complaint revealed about the loan transactions,

repayment, instalments, balance amount, default particulars, balance

particulars and category of loan, etc.

6. Considering the circumstances and facts of the complaint, contentions of the petitioner and arguments of Learned Counsels for the petitioner,

and two Judgments cited by the Learned Counsel for the petitioner in (1) (2007) 7 Scc 373, Vir Prakash Sharma, Appellant v. Anil Kumar

Agarwal and Anr. Respondents and (2) 2001 (1) Crimes 293 (SC), Alpic Finance Limited, Appellant v. P. Sadasivan and Anr. Respondents, the

Court is of the view that the said loan transaction happened between the petitioner and the respondent as per loan agreement. Supporting the loan

agreement, the petitioner also has given post dated cheques to and in favour of the respondent Bank. Out of the loan amount, the petitioner has

also paid part amount. The loan agreement is legal under the Indian Contract Act, which is Civil in nature. As such, the ingredients of the complaint

will not attract/will not cover/will not fall under the Criminal Procedure Code and Indian Penal Code. Hence, the Court is warranted to interfere

with the proceedings in C.C. No. 3036 of 2007 on the file of III Metropolitan Magistrate Court, George Town, Chennai and quash the same.

7. Accordingly, the Proceedings in C.C. No. 3036 of 2007 on the file of III Metropolitan Magistrate Court, George Town, Chennai is quashed.

The Criminal Original Petition No. 22966 of 2007 is allowed.