
(2006) 10 MAD CK 0220

In the Madras High Court

Case No : Criminal O.P. No. 24607 of 2006 and Criminal M.P. No. 1 of 2006

B.K. Ramachandra Achar

APPELLANT

Vs

The Standard Chartered Bank

RESPONDENT

Date of Decision : 11-10-2006

Acts Referred:

Citation : (2007) 1 LW(Cri) 485

Hon'ble Judges : R. Regupathi, J

Bench : Single Bench

Advocate : N. Kannan, for the Appellant; R. Karthikeyan, for 1st Respondent and Mr. A. Saravanan Government Advocate, for 2nd Respondent, for the Respondent

Final Decision : Dismissed

Judgement

R. Regupathi, J.—The Petitioner is an accused for the offence punishable under Sections 406, 420, 424, 426 and 506(2) Read with 34 I.P.C. Initially, a private complaint has been filed and it has been forward to the 2nd Respondent police for investigation u/s 156(3) of Code of Criminal Procedure. On such direction, the 2nd Respondent, registered the case and investigation is pending. Under such circumstances, the present petition to quash the proceeding has been filed before this Court.

2. The learned Counsel for the Petitioner submits that already proceedings has been initiated under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to "Securitisation Act") before the learned Chief Metropolitan Magistrate, Egmore, Chennai and an order of attachment on the property, in security, has been passed against the Petitioner. Under such circumstances, filing of the private complaint and subsequent registration of the case by the 2nd Respondent is an abuse of process of Court. Even accepting the materials produced before the 2nd Respondent, no prima-facie case is made out. Sufficient materials were not produced before the first Respondent/complainant to substantiate the offence.

Based on the materials available, the criminal offence is not at all made out and at the most, the 1st Respondent may approach the Civil Court for appropriate remedies. After receiving the orders by the learned Chief Metropolitan Magistrate, Egmore, Chennai through The Commissioner appointed by the Court, the property has also been taken in possession, which has been given for securing the loan.

3. Section 14 of the Securitisation Act provides the procedure for taking possession of the secured assets. The Act itself confers penal provisions for punishment. When the 1st Respondent approached the learned Chief Metropolitan Magistrate, Egmore, Chennai, by invoking Securitisation Act, the present offences also would have been included in the very same petition since the allegations and the parties are one and the same.

4. The learned Counsel for the Petitioner relies on a judgment reported in Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, and especially relied on paragraph-9, wherein it has been stated as follows:

When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

5. On the strength of the judgment cited, the learned Counsel for the Petitioner requested this Court to rely on the documents which have been furnished in the typed set to come to the conclusion.

6. The learned Counsel for the Petitioner relied on a judgment reported in Ram Biraji Devi and Another Vs. Umesh Kumar Singh and Another,) and submitted that in a deserving case, this High Court can exercise inherent powers to quash the proceedings.

7. The learned Counsel for the Petitioner further relied on a judgment reported in Indian Oil Corporation Vs. NEPC India Ltd. and Others, and relied on the following observation:

A growing tendency in business circles to convert purely civil disputes into criminal cases is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.

8. Therefore, it is submitted that if the present proceedings are allowed to continue, this would amount to abuse of process of Court and the present proceedings are liable to be quashed.

9. Per contra, the learned Government Advocate (Crl. Side) submits that on the strength of the direction issued by the learned Magistrate, investigation has been taken by the 2nd Respondent. When the investigation is at the preliminary stage, it is not desirable to disturb the course of investigation.

10. The learned Counsel for the 1st Respondent submitted that on perusal of the complaint, there are prima-facie materials available to proceed against the Petitioner. Further, the learned Counsel for the 1st Respondent relied on judgments reported in State of Punjab Vs. Subhash Kumar and Others, Rajesh Bajaj Vs. State NCT of Delhi and Others, and M. Narayandas Vs. State of Karnataka and Others, to submit that while exercising inherent power, the High Court cannot go into the factual aspects of the case especially when the investigation is pending.

11. I have perused the materials available on record. Admittedly, the 1st Respondent has taken the proceedings before the Chief Metropolitan Magistrate, Egmore, Chennai invoking the provisions of Securitisation Act. The allegations in the present case appears to be the same. The property which has been given as security for the money transaction is sought to be attached and accordingly an order has also been obtained by the 1st Respondent.

12. In 2005 (1) Cri 1 (SC) (State of Orissa v. Debendra Nath Padhi), it has been held by the Supreme Court that at the time when an enquiry is conducted by the High Court invoking inherent power u/s 482 Code of Criminal Procedure, the defence documents need not be looked into. Under such circumstances, I need not apply my mind on the documents produced by the Petitioner in the typed set. However, the Petitioner is at liberty to produce all the materials before the 2nd Respondent during the course of investigation.

13. The 2nd Respondent is directed to receive all the materials furnished by the Petitioner during the course of investigation. As already a complaint has been filed under Se-curitisation Act before the learned Chief Metropolitan Magistrate, Egmore, the 2nd Respondent, on conclusion of the investigation, one way or the other, is directed to file final report within a period of two months from today.

14. With the above direction, the petition is closed. Consequently, the connected Crl.M.P is closed.