

(2013) 07 MAD CK 0355

In the Madras High Court

Case No : Criminal O.P. No. 3739 of 2009

Munir Esmail Mohammed

APPELLANT

Vs

ICICI Bank Ltd.

RESPONDENT

Date of Decision : 16-07-2013

Acts Referred:

Citation : (2013) 4 MLJ(Cri) 73

Hon'ble Judges : K.B.K. Vasuki, J

Bench : Single Bench

Advocate : Akbar Ali Dhale, for the Appellant; T. Muruganantham, for the Respondent

Judgement

K.B.K. Vasuki, J.—Heard both sides. The petitioner herein, who is the sole accused in C.C. No. 4316 of 2007 on the file of X Metropolitan Magistrate, Egmore, Chennai, has come forward with the present petition to quash the proceedings.

2. The relief sought for by the petitioner is mainly on the ground that the private complaint filed by the respondent against the petitioner for the offences under Sections 406 and 420 IPC is not sustainable as there is no element of cheating either in obtaining the personal loan or in complying with the conditions for issuance of such loan and the offences under Sections 406 and 420 IPC cannot be attracted for mere non payment of loan, which is only an actionable claim to be agitated before the civil court of law.

3. The learned counsel for the petitioner has in support of his contention also cited the authority reported in P. Ashok Kumar and another v. Inspector of Police, Crime, V3 J.J. Nagar Police Station, Chennai, LNIND 2008 MAD 2731 : (2009) 1 MLJ (Cri) 352, wherein, the learned brother judge R. Regupathi, J., was pleased to heavily comment upon the illegal practice of the Magistrates in referring the civil disputes for police investigation or taking cognizance by themselves, by illegally imputing criminal flavor to civil disputes. The learned brother Judge has

expressed his anguish over such action of the Magistrates and observed that such action is not only inappropriate, but also legally untenable. The learned brother Judge has also gone to the extent of saying that the same elicited their unwanted intention to aid one party and to intimidate the other party. The learned brother Judge has considered the pendency of number of cases against borrowers in various courts, even beyond territorial jurisdiction and having recorded the conduct of financial institution in approaching the Magistrates to procure an order so that they can extract through police the principal amount and whatever rate of interest they charge from the borrowers, expressed his anguish in very strong language and found fault with the Magistrates, who failed to follow the guidelines issued by the Hon'ble Apex court for exercising greater caution in this regard. The learned brother Judge, on the basis of statistics furnished to the Court, has found that the immersion of civil disputes with criminal charges is immensely growing with each passing day and in the opinion of this court, the same is humanly not possible, if there is proper application of mind and taking cognisance by the Magistrates is on the mere request of the Bankers with an ulterior motive and in collusion and conspiracy with them and such illegal practice has made by the Magistrate Courts breeding points of pendency of unnecessary criminal cases reflecting its adverse effect at all levels upto the Supreme Court. In the light of the detailed discussion made therein, the learned brother Judge issued the following directions:

(i) The Registry is directed to withdraw all the cases pending on the file of the learned Magistrates vide Annexure A, B and C of the Vigilance Report and call for all the records connected to those cases and transfer the same to the file of the High Court, Madras.

(ii) Registry to place the entire materials and particulars before the Hon'ble the chief Justice so that orders could be passed for conducting enquiry in those matters.

(iii) Further proceedings of all those cases vide Annexure A, B and C pending on the file of the Metropolitan/Judicial Magistrates concerned are hereby stayed till the disposal of the proceedings by the Court;

(iv) All records including vigilance reports may also be placed before the Hon'ble the Chief Justice for taking appropriate departmental action against the Magistrates concerned in particular III, X, XVII and XVIII Metropolitan Magistrates, Chennai and Judicial Magistrate-III, Coimbatore and Judicial Magistrate Paramakudi, Ramnad; and

(v) in view of the orders passed for transfer of the pending cases before the Metropolitan/Judicial Magistrate Courts to the file of this Court, the Director General of Police is directed to instruct

(a) the police officers, who have received orders from the Magistrates in such cases u/s 156(3) Cr.P.C. and (b) the Station House Officers, who have directly entertained similar complaints in the name of "petition enquiry"

to obtain opinion from the Director General/Additional Director General of prosecutions/Assistant Public Prosecutors etc and to file interim/final reports before the jurisdiction Magistrates within a period of two weeks from today.

Compliance report is to be filed in this regard within three weeks by the Director General of Police.

4. The present case, as rightly pointed out by the learned counsel for the petitioner, is one such case, wherein, mere non payment of personal loan is given the colour of criminality, as such, the view expressed by the High court in the case cited above is squarely applicable to the facts of the present case, wherein the liability is more of civil in nature and in the absence of any allegations regarding any act of forgery of any records or violation of any conditions of issuance of personal loan the ingredients for the offences charged against the petitioner are not attracted and in the event of the proceedings initiated against the petitioner, which is otherwise bad in law, being allowed to continue, the same amounts to abuse of process of law and the proceedings is hence, liable to be set aside.

5. Even otherwise, the learned counsel for the respondent in the course of hearing, has given an undertaking to withdraw the private complaint filed before the concerned Magistrate Court and based on the same, he prayed to dispose of this quash petition. He also made an endorsement to that effect in the bundle. In view of the above findings and also in view of the undertaking given by the learned counsel for the respondent, this Criminal Original Petition is liable to be ordered. In the result, this Criminal Original Petition is allowed and the proceedings in C.C. No. 4316/2007 on the file of the X Metropolitan Magistrate, Egmore, Chennai stands quashed.