(2008) 02 MAD CK 0012

In the Madras High Court

Case No : Criminal O.P. No. 11030 of 2006 and Criminal M.P. No. 2878 of 2006

Ravi Srinivasa	APPELLANT
Vs	
TVS Finance and Services Ltd. (formerly known as Haritha Finance Ltd)	RESPONDENT

Date of Decision : 20-02-2008

Acts Referred:

Citation : (2008) 02 MAD CK 0012

Hon'ble Judges : R. Regupdthi, J

Bench : Single Bench

Advocate : R. Revathy, for the Appellant; S. Ashok Kumar SC for M.S. Anand, Abdul Vinodh Associates, for the Respondent

Final Decision : Allowed

Judgement

R. Regupdthi, J.—-3. (Sic).

4(a) (Sic) the offences alleged are not made out or substantiated. Curiously, Sec.l20-B IPC has also been included along with the other 3 major

offences.

4(b) Learned counsel adverted to the contents of the sanction letter dated 31.3.2000, wherein Rs. 12 lakhs is mentioned as additional finance to

the existing finance apart from specifically stating that a new additional loan will be charged at 36% p.a.; and relied upon the endorsement therein

which is to the following effect:

I also hereby authorise Haritha Finance Limited to adjust the loan proceeds against the HP agreement No. 710001 entered into between TTG

Industries Limited and TVS Finance and Services Ltd. (now Haritha Finance Ltd)

According to the learned counsel, the aforesaid aspects pointed out by her would go to show that the offences alleged have not been made out and

therefore, the proceedings may be quashed.

4(c) Learned counsel relied on the decisions reported in R.P. Kapur Vs. The State of Punjab, , R.S. Raghunath Vs. State of Karnataka and

another, and 2004 (2) Supreme 501 (State of Madhya Pradesh v. Awadh Kishore Gupta and Others), wherein it has been held that, where the

allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute

the offence alleged; in such cases, no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First

Information Report to decide whether the offence alleged is disclosed or not.

5. Per contra, learned Senior Counsel appearing on behalf of the respondent/ complainant, submits that the fact remains that the petitioner/accused

borrowed a huge sum of Rs. 12 lakhs from the complainant as a second loan only for the purpose of clearing the loan already borrowed in the HP

loan agreement; that no doubt, the loan borrowed has been adjusted towards arrears of the HP agreement loan and that not only the principal but

also along with interest as on 27.8.2002 to the tune of Rs. 18,22,572.93 has not been paid and still it is outstanding. In such circumstances, the

present loan must be treated as an independent transaction and it should not be clubbed together with the HP loan transaction. According to him,

the entire amount of Rs. 12 lakhs towards new loan along with interest has not been paid and therefore, offence under Sec. 420 IPC is made out;

similarly since the present loan has been availed only for the purpose of clearing the loan under the HP agreement, it must be presumed that the

petitioner obtained the same with dishonest intention. He further submits that inasmuch as the learned Magistrate has taken cognizance of the case

and process has been issued, it is for the accused/petitioner to approach the learned Magistrate with all available materials in his favour by way of

discharge petition and without adopting such a recourse, he straight away approached this Court. The learned senior counsel relied on a decision

reported in Ajay Mehra and Anr. v. Durgesh Babu and Ors., 2001 (3) Crimes 155 (SC) , wherein it has been held as follows:

But that stage has not reached in the present case. The Magistrate has merely taken cognizance of the offence and has issued process and therefore at this stage the question of consideration of other materials does not arise and the court will have to take a view taking into account the

fact that all the statements made in the complaint as well as the statement made u/s 202, if taken on their face value, an offence can be said to have

been made out. Applying that standard, it is held that there was no error in taking cognizance of the offence. However, it would be open to the

accused while framing charge to argue as to whether the materials do permit framing of a charge.

6. Heard the rival contentions of both the parties. At the outset, it has to be noted that in the complaint, allegations have been made with reference

to 120-B. It is the specific allegation that instalments payable towards the loan availed by the Industry under the HP agreement were not paid and

for payment of the same, a new loan of Rs. 12 lakhs has been availed by the petitioner in his capacity as Managing Director of the same Company

and, it is specifically admitted by the complainant at paragraph 7 of the private complaint that the entire amount has been adjusted towards arrears

of the loan under the HP agreement. Separate proceeding has been initiated against the Company for non-payment of the loan under the HP

Agreement.

7. Admittedly, the HP loan agreement existed between the complainant and the Industry, in which the petitioner is the Managing Director. In the

sanction letter for the present loan, an endorsement has been made to the effect that the same is granted for adjusting the arrears towards the loan

under the HP agreement.

8. Such being the admitted factual aspects, it is clear that the present loan borrowed has been merged with the HP. loan and therefore availing of

the present loan cannot be treated as a separate transaction. In the light of the same, it cannot be contended that such loan was availed with

dishonest intention at the inception. Admittedly, the loan was availed only for the purpose of clearing the arrears of loan under the HP agreement

and therefore the second loan cannot be categorized to have been borrowed with deception as the petitioner had no intention to cheat the

complainant. The allegations made will not even constitute misappropriation and criminal breach of trust since the act committed does not fit in

within the definitions therefore. Since the accused is the only person in the case, Sec. 120-B IPC also will not get attracted at all. The Hon''ble

Supreme Court in the case law reported in Indian Oil Corporation Vs. NEPC India Ltd. and Others, , expressed its opinion as follows:

However, there is a growing tendency in business circles to convert purely civil disputes into criminal cases. This 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 breakdown 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.

The Apex Court further held as follows:

The Principles relating to exercise of jurisdiction u/s 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings which

are relevant for the present purpose are:

(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety,

do not prima facie constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a

meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while

examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been

initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with

abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the

complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A

commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal

offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a

commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the

criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

9. Having regard to the abundant factual details available and the aforesaid case law of the Apex Court, I am of the considered view that the

offences alleged in the complaint have not been substantiated and the dispute being purely of a civil nature, the present proceedings against the

petitioner will be an abusage of process of Court. Accordingly, the proceedings against the petitioner in C.C.No. 3055 of 2006 on the file of

learned III Metropolitan Magistrate, George Town, Chennai are quashed. However, the respondent/complainant are at liberty to proceed against

the petitioner in the manner known to law.

10. Net result, the petition is allowed. Consequently, the connected M.P is closed.