(2002) 12 MAD CK 0147

In the Madras High Court

Case No : Criminal O.P. No. 17907 of 2001 and Criminal M.P. No''s. 7326, 6193 and 6194 of 2001

Sakthi Finance Ltd. APPELLANT

Vs

Dr. Subbiah, Devinder Singh Bedi, The Branch Manager, TIIC and Dugar Finance Ltd., its Manager RESPONDENT

Date of Decision : 31-12-2002

Acts Referred:
Penal Code, 1860 (IPC) — Section 34, 403, 406, 408, 420

Citation : (2004) 2 LW(Cri) 635

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : E. Omprakash, for the Appellant; G. Appavo, for R1 and M. Ullasa Velan, for R-3, for the Respondent

Final Decision : Allowed

Judgement

M. Karpagavinayagam, J.—Dr. Subbiah, the first respondent herein, filed a private complaint against four accused, including the petitioner, M/s. Sakthi Finance Limited, alleging that they have committed the offences under Sections 420, 406, 403 and 424 read with 34 I.P.C.

2. M/s. Sakthi Finance Ltd., which is arrayed as third accused in the said private complaint, aggrieved by the issue of process in the said complaint, which was served on it, has approached this Court by filing this application to quash the said complaint.

3. According to the complainant, the first respondent herein, one Devinder Singh Bedi approached him and represented that he would supply medical equipments required for his Doctor''s profession through his firm and that he would also arrange for necessary financial assistance under hire purchase scheme from private and Governmental institutions. Accordingly, the complainant applied for financial assistance to the institution like M/s. Sakthi Finance and other Governmental organisations. Despite receipt of finance from those financial

institutions, Devinder Singh Bedi did not supply equipments within the time promised. Therefore, the said Devinder Singh Bedi and the financial institutions are responsible for non-supply of the equipments, and as such, they are liable to be punished for the said offences.

4. Learned counsel for the petitioner would seek to quash the complaint mainly on two grounds:- (i) there is no allegation against the petitioner/A-3 with reference to the false representation and consequent cheating and even according to the complainant, the amount was sanctioned by the petitioner/ finance company in favour of the complainant and in respect of the said amount, the petitioner filed a suit and obtained a decree against the complainant, and as such, no offence is made out against the petitioner/finance company and (ii) with reference to the same transaction, the complainant, the first respondent herein, filed a complaint in the year 1992 before the Crime Branch and the same was registered in Cr. No. 92 of 1992 under Sections 408 and 420 I.P.C., which was subsequently referred by the Police as non-cognisable offences. In the said complaint, there is no whisper about the allegation against the petitioner, though the allegation was made only against Devinder Singh Bedi.

5. On the strength of the above points, learned counsel for the petitioner would argue at length.

6. Learned counsel for the first respondent Mr. Appavoo would submit that he has already handed over the bundle to the first respondent.

7. The quash application has been admitted on 11-9-2001. When it came up for hearing on 1-10-2002, at the request of learned counsel for the respondents, the matter was posted to 4-10-2002. Again, it was adjourned to 10-10-2002. Then on 10-10-2002, it was directed to be posted after dasara vacation. Though it is stated by learned counsel for the first respondent that the bundle has been handed over to his client long back, till date, no change of vakalat has been filed through some other counsel. Therefore, I am constrained to go through the bundle and pass orders on merits.

8. The first respondent would admit in the complaint that he had already given a complaint to the Police and the same was referred as non-cognisable case.

9. On going through the complaint which has been registered by the Crime Branch in Cr. No. 92 of 1992, it is noticed that there are clear allegations against Devinder Singh Bedi and another. Admittedly, there is no mention of the petitioner/company with reference to the participation in the crime committed by Devinder Singh Bedi.

10. Even in the private complaint in question, it is clearly mentioned that M/s. Sakthi Finance, the petitioner, sanctioned the loan applied by the first respondent and a portion of the amount has been remitted by the complainant to the petitioner/company. According to the complainant, he remitted a portion of the loan amount to the petitioner, believing that the equipments would be supplied

sooner or later. The petitioner/company is only to sanction the loan and it is not responsible for supply of materials. The representation with reference to supply of materials was admittedly made by Devinder Singh Bedi only and not by the petitioner. The only vague allegation made in the complaint is this:-

"....The complainant states that the officials of the financial institutions namely, TIIC, Shakthi Finance Ltd., & Dugar Finance India Ltd., were hand in glove and colluded with each other and never bothered to supply the equipments to the complainant...."

11. There is no basis for the allegation quoted above in the complaint. As indicated above, the financial institutions like the petitioner was only concerned with sanction of loan, which has been admittedly received by Devinder Singh Bedi on behalf of the first respondent/complainant.

12. Under those circumstances, no offence is made out against the petitioner. Consequently, the proceedings are liable to be quashed as against the petitioner/A-3. It is noticed that the other financial institutions, namely, the Branch Manager, TIIC and M/s. Dugar Finance Ltd., have been made as respondents 3 and 4 and the above grounds for quashing the proceedings against the petitioner/A-3, would squarely apply to the other financial institutions also. Therefore, even though they have not filed any application for quashing the proceedings, the proceedings against them are also liable to be quashed.

13. Accordingly, the proceedings are quashed as against the petitioner and the respondents 3 and 4. The petition is allowed. The trial Court is directed to go on with the trial against the first accused, namely, Devinder Singh Bedi and dispose of the same as expeditiously as possible. Consequently, Crl.M.P. Nos.6193, 6194 and 7326 of 2001 are closed.

