

(2024) 12 KL CK 0028

High Court Of Kerala

Case No: Criminal Miscellaneous Petition No.2132 Of 2020

Gopalakrishna Pillai

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision: Dec. 6, 2024

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 482
- Indian Penal Code, 1860 - Section 420
- Kerala Money Lenders Act, 1958 - Section 17

Hon'ble Judges: G.Girish, J

Bench: Single Bench

Advocate: S.Rajeev, K.K.Dheerendrakrishnan, V.Vinay, D.Feroze, K.Anand, Sangeeth Raj

Final Decision: Dismissed

Judgement

G.Girish, J

1. The first accused in C.C.No.3510/2016 on the files of the Judicial First Class Magistrate Court, Adoor, has filed this petition under Section 482 of

the Code of Criminal Procedure to quash the proceedings in the said case.

2. The genesis of the case is from an F.I.R registered by the Pandalam Police on the basis of a complaint filed by the second respondent (defacto

complainant), who alleged that the first accused cheated her by executing a sale deed in respect of the property of the defacto complainant in favour

of the second accused, the employee of the first accused, by fraudulently and dishonestly inducing her to believe that it was only a pledge deed

executed as security for the loan of Rs.5,00,000/- advanced to the defacto complainant. It is the further allegation of the defacto complainant that the

first accused obtained 13 signed blank cheque leaves of her and her husband on 11.04.2014 when the transactions took place. The defacto complainant also alleged that the first accused collected unconscionable interest of Rs.50,000/-per month for the above amount advanced to her and threatened her when she defaulted the payment of interest after December, 2015, that the property would be sold to others unless the arrears of interest are cleared. According to the defacto complainant, she got suspicious about the transaction only at that time, and that upon enquiry with the Sub Registrar's office, it was revealed that the document executed on 11.04.2014 was in fact a sale deed and not a pledge deed. The defacto complainant also contended that the first accused demanded an amount of Rs.35,00,000/- when she requested to reconvey the property after receiving the principal amount and interest out of the loan advanced to her. The first accused was said to be having no money lender's licence at the time when the above transaction took place.

3. In the present petition, the petitioner would contend that he was having licence issued by the Commercial Tax Department, Government of Kerala for money lending transactions, and that the contention of the second respondent about the execution of a sale deed in favour of the second accused under the pretext of execution of a pledge deed, is totally false. According to the petitioner, the defacto complainant had clubbed two transactions to get over from the sale of the property after so many years by taking advantage of the "Operation Kubera" action initiated against money lenders. It is further contended that the allegations in the final report do not disclose the ingredients of the offence under Section 420 IPC or the relevant provisions of the Kerala Money Lenders Act and the Kerala Prohibition of Charging of Exorbitant Interest Act.

4. Heard the learned counsel for the petitioner and the learned Public Prosecutor representing the first respondent.

5. As regards the offence under Section 17 of the Kerala Money Lenders Act, 1958, the petitioner would contend that he is not liable to be proceeded against since he was having a valid money lending licence as evidenced by Annexure-III series. However, the above contention of the petitioner will

not help him from escaping from the liability under Section 17 of the Kerala Money Lenders Act, since Annexure-III licence and its renewal as evidenced by Annexure-III series, are only from 18.07.2014 onwards. The transaction relating to the present case is said to have taken place on 11.04.2014. The petitioner could not produce any document to show that he was having any money lender's licence on that date. The learned counsel for the petitioner would contend that a single instance of advancing money cannot be termed as carrying on business of money lending as envisaged under Section 17 of the Kerala Money Lenders Act, and thus, it cannot be said that the offence envisaged under the said provision is attracted in the facts and circumstances of the case. It is not possible to accept the above argument of the learned counsel for the petitioner, since Annexure-III series documents produced by the petitioner would reveal that the petitioner was having money lending licence from 18.07.2014 till 31.03.2017. Thus, the above documents are clear indications of the business of money lending being carried on by the petitioner during the period starting from three months past the date of transaction in this case. Thus, the contention of the petitioner that the transaction involved in this case, being an isolated instance of advancing money, cannot be termed as business of money lending, is devoid of merit.

6. The final report filed by the Investigating Officer, and the accompanying records, would disclose that the second respondent has got a consistent case that she was fraudulently and dishonestly induced by the petitioner to believe that the document got executed from her on 11.04.2014 was only a pledge deed, and that under the above inducement the petitioner managed to execute a sale deed in respect of the property of the defacto complainant in favour of the second accused, while advancing a loan of Rs.5,00,000/- to her. It is true that there are the statements of the Sub Registrar concerned and the Document Writer about the execution of a sale deed by the defacto complainant in favour of the second accused. However, it is not possible for this Court, in a proceedings under Section 482 Cr.P.C., to have detailed evaluation of the evidence of the witnesses and to have threadbare analysis of the documents, to find whether it would point to the irresistible conclusion of the culpability of the accused. It has been held by the

Honâ€™ble Apex Court in State v. Navjot Sandhu [(2003) 6 SCC 641] that the inherent power under Section 482 Cr.P.C. is to be used only in cases

where there is an abuse of process of the court, or where interference is absolutely necessary for securing the ends of justice. It is further held

thereunder that the inherent power must be exercised very sparingly as cases which require interference would be few and far between. As far as

the present case is concerned, it cannot be said that the criminal proceedings against the petitioner have been initiated illegally, vexatiously and without

jurisdiction. It is also not possible to say that the proceedings against the petitioner is an abuse of process of court. In the above circumstances, it is not

possible for this Court to interfere with the trial and to wind up the proceedings by taking recourse to Section 482 Cr.P.C. Needless to say that the

present petition is bereft of merit.

In the result, the petition is hereby dismissed. It is made clear that the observations made by this Court in this order are solely for the purpose of

explaining the scope of invoking Section 482 Cr.P.C., and that the Trial Court shall decide the matter untrammelled by any of those observations.