
Housing and Development Finance Corporation and Others Vs State and Others

Criminal R.C. No. 89 of 2015 and M.P. Nos. 1 and 2 of 2015 and CrI.O.P. No. 1896 of 2015 and M.P. Nos. 1 and 2 of 2015

Court: Madras High Court

Date of Decision: March 18, 2015

Acts Referred:

Constitution of India, 1950 - Article 226#Criminal Procedure Code, 1973 (CrPC) - Section 227, 397, 397(1), 397(2), 397(3)#Penal Code, 1860 (IPC) - Section 120(b), 406, 409, 418, 420

Hon'ble Judges: R.S. Ramanathan, J

Bench: Single Bench

Advocate: N.R. Elango, Senior Counsel for R. Veivekananthan, for the Appellant; M. Maharaja, APP, Advocates for the Respondent

Judgement

@JUDGMENTTAG-ORDER

R.S. Ramanathan, J.

The petitioners are A3 and A4 in C.C. No. 539 of 2013 on the file of XI Metropolitan Magistrate, Saidapet. The

first respondent filed the charge sheet against the petitioners and two others on the basis of the complaint given by the 2nd respondent and the

petitioners are charged for offence under Sections 406, 418, 420 r/w 120(b) IPC.

2. Mr. N.R. Elango, learned Senior Counsel appearing for the petitioners submitted that a reading of the charge sheet and the statement of

witnesses would reveal that no offence has been made out against the petitioners, who are the Housing and Development Finance Corporation and

the Regional Manager representing the Housing and Development Finance Corporation. The learned Senior Counsel further submitted that the

case of the prosecution as seen from the charge sheet is that the second respondent and his brothers entered into a Joint Development Agreement

on 13.12.2014, 17.12.2014 and Supplement Agreement on 29.03.2006 with A1, represented by its Managing Director and A2 for the purpose

of developing the property belonging to the 2nd respondent and his brothers situated at New No. 165, Old No. 110, St. Mary's Road, Chennai-

118. As per the agreement, A1 and A2 should construct building on behalf of the complainant and his brothers at their own costs and on

completion of the construction, the complainant is entitled to 50% of the super built up area and the remaining 50% has to be taken by A1 and A2.

It is also admitted that at the request of A1 and A2, the complainant and his brothers were ready to provide financial assistant and gave power to

A1 and A2 to raise funds by mortgaging the property to the maximum of Rs. 7.50 crores. However, contrary to the specific authorisation given in

the power, A1 and A2 deposited the title deeds of the property of the 2nd respondent and his brother with the petitioners and the petitioners

knowing fully well that the power was given to A1 and A2 to raise a loan only for a sum of Rs. 7.50 crores, granted a loan of Rs. 22 crores and

therefore, the petitioners conspired with A1 and A2 in causing wrongful loss to the de facto complainant and by reason of the conspiracy

committed by the petitioners all the accused gained wrongful gain and therefore, the case was charged against the petitioners, A1 and A2 under

Sections 406, 418, 420 r/w 120(b) IPC.

3. The learned Senior Counsel submitted that the entire loan has been repaid by A1 and A2 and therefore, there is no loss to the de facto

complainant and therefore, there is no purpose in prosecuting the petitioners. The learned Senior Counsel further submitted that as per the Joint

Development Agreement entered into with the 1st accused company, the land owners viz., the de facto complainant and his brothers agreed to

convey free of encumbrances an undivided 50% share in the schedule property to the 1st accused or its nominees(s), 1st accused agrees to

develop the schedule property and construct residential/commercial building on the schedule property at their own costs and expense and deliver

to the land owners, free of costs and charges, 50% of total super built up area in the buildings to be put up on the schedule property along with

50% covered/open car parking area, terrace areas, garden areas and all other facilities, free from all encumbrances and liabilities. It is also made

clear in the Joint Development Agreement that 1st accused is entitled to the remaining 50% of the total super built up area. Therefore, as per the

Joint Development Agreement, the 1st accused is entitled to 50% of the undivided share of the land and 50% of the total super built up area and

power was given to the 1st accused to create mortgage on the property up to the maximum amount of Rs. 7.50 crores and on the basis of power,

the first accused representing the owners deposited the title deeds of the property and availed loan of Rs. 22 crores. He further submitted that as

per the Memorandum of Deposit of Title Deeds dated 31.05.2006, mortgage was created only in respect B schedule property, which represented

50% of the undivided share of the 1st accused and therefore, no breach of trust or cheating has been committed by the petitioners as the 1st

accused was otherwise entitled to 50% of the undivided share in the property as per the Joint Development Agreement and the mortgage was

created only in respect of 50% of the undivided share in the property. He therefore, submitted that no offence of breach of trust or cheating has

been committed. He further submitted that even assuming that the petitioners sanctioned loan in excess of the power given to the 1st accused by

the owners, the owners can very well refute the liability in excess of 7.50 crores and therefore, no offence has been committed by the petitioners.

He therefore, submitted that the case is liable to be quashed as against the petitioners.

4. On the other hand, Mr. A. Ragunathan, learned Senior Counsel appearing for the 2nd respondent submitted that the petitioners filed Crl.M.P.

No. 2988 of 2013 in C.C. No. 539 of 2013 for discharge before the learned XI Metropolitan Magistrate, Saidapet, and the petition was

dismissed and without challenging the said order, the petitioners filed Crl.O.P. No. 1896 of 2015 invoking Section 482 Cr.P.C., to quash the

proceedings and therefore, Crl.O.P. No. 1896 of 2015 is not maintainable in law. He further submitted that Crl.R.C. No. 89 of 2015 filed by the

petitioners challenging the order passed in Crl.M.P. No. 2988 of 2013 is also not maintainable in law having regard to the plea taken before the

trial Court and the plea now taken in this revision. He further submitted that while filing an application for discharge, the main plea taken was that

the entire loan was discharged and therefore, the case has to be quashed and rejecting the same, the trial Court dismissed the application and while

challenging the said order of dismissal, the petitioners cannot set up a new case and raise a new point and therefore, the revision is to be dismissed.

5. The learned Senior Counsel further submitted that admittedly power was given to the 1st accused for raising a loan of Rs. 7.50 crores by

mortgaging the property belonging to the de facto complainant and his brothers and the petitioners are also aware the power given to the 1st

accused to the extent of 7.50 crores. Nevertheless, in connivance with the accused 1 and 2, the petitioners sanctioned loan of Rs. 22 crores to the

1st accused and made the 1st accused to execute the memorandum of title deeds for the entire sum of Rs. 22 crores availed by the 1st accused

and therefore a clear case of cheating is made out. He further submitted that the 1st accused is the agent of the de facto complainant and therefore,

the 1st accused was entrusted with the property and he converts to his own use the property by creating a mortgage over and above the limited

sanctioned by the principal and therefore the accused 1 and 2 committed the offence punishable under Section 409 IPC and the petitioners

conspired with the accused 1 and 2 in creating mortgage by allowing the 1st accused to deposit the title deeds for the entire loan of Rs. 22 crores.

And therefore, all the accused have committed the offence punishable under Sections 406, 418, 420 r/w 120(b) IPC and in a petition to quash the

charge sheet, this Court has to see whether any prima facie case is made out and once prima facie case has been made out, this petition has to be

dismissed. He also relies upon the judgments reported in State of Tamilnadu by Ins. of Police Vigilance and Anti Corruption Vs. N. Suresh Rajan

and Others, (2014) 1 AD 505 : (2014) AIRSCW 942 : (2014) CriLJ 1444 : (2014) 1 JT 394 : (2014) 1 RCR(Criminal) 572 : (2014) 1 SCALE

219 : (2014) 4 SCJ 135 , Kotamsath Appanna Vs. Koppoju Appalaraju, (1949) 2 MLJ 296 , P. Vijayan Vs. State of Kerala and Another, AIR

2010 SC 663 : (2010) CLT 551 : (2010) CriLJ 1427 : (2010) 2 Crimes 1 : (2010) 1 JT 459 : (2010) 1 SCALE 604 : (2010) 2 SCC 398 :

(2010) 3 SCR 78 : (2010) 2 UJ 724 : (2010) AIRSCW 886 : (2010) AIRSCW 6302 : (2010) 7 Supreme 271 : (2010) 2 Supreme 199 , Thakur

Das (Dead) by Lrs. Vs. State of Madhya Pradesh and Another, AIR 1978 SC 1 : AIR 1977 SC 1 : (1978) CriLJ 1 : (1978) 1 SCC 27 : (1978)

SCC(Cri) 21 : (1978) 1 SCR 732 , State of Maharashtra Vs. Vikram Anantra Doshi, (2014) AIRSCW 5567 and CDJ 2014 MHC 6151 (Sri

Ganesh V. State Rep. By Inspector of Police, Washermenpet, Chennai and another) in support of his contention.

6. The contention of the learned Senior Counsel Mr. A. Ragunanathan is that the present petition filed by invoking the inherent jurisdiction of this

Court under Section 482 of the Cr.P.C., is not maintainable as the petitioner filed CrI.M.P. No. 2988 of 2013 before the learned XI Metropolitan

Magistrate, Saidapet for discharge and that was dismissed and without challenging the same, the present petition is not maintainable.

7. According to me, the argument of the learned Senior Counsel appearing for the 2nd respondent cannot be accepted having regard to the

judgments reported in Jitender Kumar Jain Vs. State of Delhi and Others, (1998) 8 SCC 770 and Krishnan and another Vs. Krishnaveni and

another, AIR 1997 SC 987 : (1997) CriLJ 1519 : (1997) 1 Crimes 97 : (1997) 1 JT 657 : (1997) 1 SCALE 458 : (1997) 4 SCC 241 : (1997) 1

SCR 511 : (1997) AIRSCW 950 : (1997) 1 Supreme 628 .

(a) In the judgment reported in Jitender Kumar Jain Vs. State of Delhi and Others, (1998) 8 SCC 770 , it is held as follows:-

2. The appellant had moved the High Court of Delhi in a petition under Section 482 of the CrPC invoking its inherent jurisdiction. The High Court

assumed the petition to be as if one under Section 397(2) [sic 397(3)] of the CrPC, which according to it did not lie since the revision petition

preferred by the appellant had been dismissed by the Court of Session. We are of the view that the High Court failed to distinguish its separate

powers under Section 397 of the CrPC as also under Section 482 of the said Code. It is true that a second revision petition does not lie before the

High Court when one is dismissed by the Court of Session. Still the Court of Session is a court subordinate to the High Court and, as such, its

proceedings are open to scrutiny by the High Court in exercise of its inherent power under Section 482 of the CrPC. The High Court in these

circumstances, should not have dismissed the petition of the appellant on the premise as it has done. It is otherwise open to the High Court not to

interfere in a matter when examining a case under Section 482 of the CrPC. In this view of the matter, we set aside the impugned order of the High

Court and remit the matter back to the High Court for reconsideration. It is ordered accordingly.

(b) In the judgment reported in Krishnan and another Vs. Krishnaveni and another, AIR 1997 SC 987 : (1997) CriLJ 1519 : (1997) 1 Crimes 97

: (1997) 1 JT 657 : (1997) 1 SCALE 458 : (1997) 4 SCC 241 : (1997) 1 SCR 511 : (1997) AIRSCW 950 : (1997) 1 Supreme 628 , it is held

as follows:-

10. Ordinarily, when revision has been barred by Section 397(3) of the Code, a person accused/complainant - cannot be allowed to take recourse

to the revision to the High Court under Section 397(1) or under inherent power of the High Court under Section 482 of the Code since it may

amount to circumvention of the provisions of Section 397(3) or section 397(2) of the Code. It is seen that the High Court has suo motu power

under Section 401 and continuous supervisory jurisdiction under Section 483 of the Code. So, when the High Court on examination of the record

finds that there is grave miscarriage of justice or abuse of process of the courts or the required statutory procedure has not been complied with or

there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it

corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the

process that the High Court is preserved with inherent power and would be justified, under such circumstance, to exercise the inherent power and

in an appropriate case even revisional power and in appropriate case even revisional power under Section 397(1) read with Section 401 of the

Code. As stated earlier, it may be exercised sparingly so as to avoid needless multiplicity or procedure, unnecessary delay in trial and protraction

of proceedings....

11. In Madhu Limaye Vs. The State of Maharashtra, AIR 1978 SC 47 : (1978) CriLJ 165 : (1977) 4 SCC 551 : (1978) SCC(Cri) 10 : (1978) 1

SCR 749 : (1977) 9 UJ 733 , a three-Judge Bench was to consider the scope of the power of the High Court under Section 482 and Section

397(2) of the Code. This Court held that the bar on the power of revision was put in order to facilitate expedient disposal of the case but in

Section 482 it is provided that nothing in the Code which would include Section 397(2) also, shall be deemed to limit or affect the inherent powers

of the High Court. On an harmonious construction of said two provisions in this behalf, it was held that though the High Court has no power of

revision in an interlocutory order, still the inherent power will come into play when there is no provision for redressal of the grievance of the

aggrieved party.

Therefore, the petitioners are entitled to file the petition by invoking the inherent jurisdiction of the Court even though they have not challenged the

order passed in Crl.M.P. No. 2988 of 2013.

8. According to me, the Court below erred in entertaining the complaint against the petitioners and erred in dismissing the application filed by the

petitioners for discharge. As stated supra, the petitioners are the Bank, which provided finance to A1 and A2 and as per the Joint Development

Agreement entered into between the second respondent and his brothers with A1 and A2, the 1st accused is entitled to 50% of the undivided

share of the land and also 50% of the super built up area. As per the power given by the owners, A1 and A2 are entitled to create mortgage for a

total sum of Rs. 7.50 crores. Admittedly, mortgage was created for Rs. 22 crores and it is seen from the Memorandum of Title Deeds, mortgage

has been created only in respect of 50 % of the undivided share of the property and after the construction was over, they are also entitled to 50%

of the super built up area. Therefore, considering the fact that A1 and A2 are entitled to 50% of the undivided share in the land and 50% of the

super built up area, the bank has provided additional finance. Therefore, according to me, there is no question of criminal breach of trust or

cheating committed by the petitioners, who are the bankers who provided finance to A1 and A2. According to me, even if the loan amount was

not repaid by A1 and A2, no offence is said to have been committed by the petitioners by advancing Rs. 22 Crores to A1 and A2. As rightly

submitted by Mr. N.R. Elango, the learned Senior Counsel, the bank cannot proceed against the owners for more than 7.50 crores, for which

power was given to A1 and A2 and it is not the case of the prosecution and the owners that the bank has filed any suit for recovery against the

owners for recovery of Rs. 22 crores and it is an admitted case that the entire loan amount was repaid. Though by repaying the entire loan amount,

the accused cannot seek quashing of the case, having regard to the facts of the present case, the said proposition cannot be applied to the

petitioners as they have not availed the loan and they only advanced the loan to A1 and A2 on the basis of Joint Development Agreement as well

as on the basis of power of attorney.

9. In the judgment reported in State of Orissa Vs. Debendra Nath Padhi, AIR 2005 SC 359 : (2005) 99 CLT 348 : (2005) 1 CTC 134 : (2004)

10 JT 303 : (2004) 10 SCALE 50 : (2005) 1 SCC 568 : (2004) AIRSCW 6813 : (2004) 8 Supreme 568 , the Honourable Supreme Court held

that only in rare cases, the Court can consider unimpeachable evidence of sterling quality produced by the accused while quashing the complaint

and in other cases, the Court has to proceed on the basis of the materials furnished by the prosecution.

10. In State of Maharashtra Vs. Vikram Anantrai Doshi, (2014) AIRSCW 5567 , the Supreme Court having regard to the facts of the case held

as follows:

It is a social wrong and it has immense social impact. It is an accepted principle of handling of finance that whenever there is manipulation and

cleverly conceived contrivance to avail of these kind of benefits it cannot be regarded as a case having overwhelmingly and predominatingly of civil

character. The ultimate victim is the collective. It creates a hazard in the financial interest of the society. The gravity of the offence creates a dent in

the economic spine of the nation. The cleverness which has been skillfully contrived, if the allegations are true, has a serious consequence. A crime

of this nature, in our view, would definitely fall in the category of offences which travel far ahead of personal or private wrong. It has the potentiality

to usher in economic crises. Its implications have its own seriousness, for it creates a concavity in the solemnity that is expected in financial

transactions. It is not such a case where one can pay the amount and obtain a "no due certificate" and enjoy the benefit of quashing of the criminal

proceeding on the hypothesis that nothing more remains to be done. The collective interest of which the Court is the guardian cannot be a silent or

a mute spectator to allow the proceedings to be withdrawn, or for that matter yield to the ingenious dexterity of the accused persons to invoke the

jurisdiction under Article 226 of the Constitution or under Section 482 of the Code and quash the proceeding. It is not legally permissible.

In the aforesaid case, the bank was defrauded by the borrower and on the complaint of the bank official, the case was registered against the

borrower and in that context, the Honourable Supreme Court observed as stated above. In this case, the facts are converse and as stated supra,

the bank advanced loan to A1 and A2 on the basis of Joint Development Agreement and merely because the bank has granted loan in excess of

the power given to A1 and A2 by the owners it cannot be presumed that the bank has Colluded with A1 and A2.

11. In the judgment reported in Thakur Das (Dead) by Lrs. Vs. State of Madhya Pradesh and Another, AIR 1978 SC 1 : AIR 1977 SC 1 :

(1978) CriLJ 1 : (1978) 1 SCC 27 : (1978) SCC(Cri) 21 : (1978) 1 SCR 732 the facts are entirely different and the Honourable Supreme Court

considered the scope of revisional jurisdiction conferred upon the High Court under Sections 397 and 401 of the Cr.P.C. and held that the

revisional power can be exercised only in exceptional cases where the interest of public justice require interference for the correction of a manifest

legality or the prevention of a gross miscarriage of justice. In this case as stated supra, there was no financial loss to the bank and the bank

advanced loan on the basis of the security of 50% undivided share to which A1 and A2 were entitled to as per Joint Development Agreement.

12. In the judgment reported in P. Vijayan Vs. State of Kerala and Another, AIR 2010 SC 663 : (2010) CLT 551 : (2010) CriLJ 1427 : (2010)

2 Crimes 1 : (2010) 1 JT 459 : (2010) 1 SCALE 604 : (2010) 2 SCC 398 : (2010) 3 SCR 78 : (2010) 2 UJ 724 : (2010) AIRSCW 886 :

(2010) AIRSCW 6302 : (2010) 7 Supreme 271 : (2010) 2 Supreme 199 , scope of Section 227 of Cr.P.C. has been discussed and there is no

quarrel about the same.

13. In the judgment reported in Kotamsath Appanna Vs. Koppoju Appalaraju, (1949) 2 MLJ 296 the accused took the gold jewel from P.W.1

for showing to his wife for placing an order for a similar jewel and latter failed to return the same. The defence was that P.W.1 owned some debts

to the accused and therefore, the accused retained the jewel. In that context, it was held that whenever a thing is utilised for a purpose not intended

and also against an express agreement or implied understanding, an offence under section 406 I.P.C. is made out. In this case, the power was

given for the purpose of securing the finance of Rs. 7.50 crores and in addition to the power the 1st and 2nd accused are entitled in their own right

to 50% undivided share in the property and considering the same, the bank has advanced Rs. 22 crores and therefore, it cannot be stated that the

bank has committed the offence punishable under Section 406 I.P.C.

14. In the judgment reported in State of Tamilnadu by Ins. of Police Vigilance and Anti Corruption Vs. N. Suresh Rajan and Others, (2014) 1 AD

505 : (2014) AIRSCW 942 : (2014) CriLJ 1444 : (2014) 1 JT 394 : (2014) 1 RCR(Criminal) 572 : (2014) 1 SCALE 219 : (2014) 4 SCJ 135

the Honourable Supreme Court held that if the trial Court is satisfied that a prima facie case is made out, charge has to be framed. According to

me, trial Court erred in holding that prima facie case is made out, in view of the terms of the Joint Development Agreement the accused 1 and 2

are entitled to have 50% of the undivided share in the property as well as 50% of the super built up area. Therefore, the judgments cited by the

learned Senior Counsel appearing for the second respondent cannot be applied to the facts of the case.

15. As stated supra, the petitioners have only advanced money to the accused 1 and 2 on the basis of Joint Development Agreement as well as the

power given by the accused 1 and 2 and the mortgage was created only in respect of 50% of the undivided share of the land to which A1 and A2

are also entitled as per the Joint Development Agreement and the fact that the amount has already been repaid to the petitioners by A1 and A2

and no wrong full loss was caused to the de facto complainant and no wrong full gain was obtained by the petitioners by A1 and A2 and hence, no

offence is made out by the petitioners. Therefore, CrI.R.C. No. 89 of 2015 is allowed. Having regard to the fact that CrI.O.P. No. 1896 of 2015

is partly allowed. Consequently, connected miscellaneous petitions are closed.