IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2015

CORAM

THE HON'BLE Ms.JUSTICE K.B.K. VASUKI

Crl.O.P.Nos.10637, 10638, 10639, 10640, 10641
and 14857 of 2013
MP.Nos.1+1+1+1+1+1 and 2+2+2+2+2+2 of 2013
and 1+1+1+1+1+1 of 2014

V.R. Gunasekaran ...Petitioner in all the petitions

vs

M/s Century Finance Corporation rep by
its Proprietor, R. Sunilkumar Bafna,
By Power Agent,
R. Sumerchand Bafna
No.8/1, Centotaph Road,
1st Lane, Teynampet,
Chennai-600 018 ...Respondent in Crl.O.P.No.10637/2013

M/s Swastik Finance Corporation rep by
its Proprietor R. Sumerchand Bafna,
No.8/1, Centotaph Road,
1st Lane, Teynampet,
Chennai-600 018 ... Respondent in Crl.O.P.No.10638/2013

M/s Vinitha Associates Ltd rep by
its Director
R. Sumerchand Bafna,
No.8/1, Centotaph Road,
1st Lane, Teynampet,
Chennai-600 018 ... Respondent in Crl.O.P.No.10639/2013

M/s Vinitha Resorts Ltd rep by
its Director,
R. Sumerchand Bafna,
No.8/1, Centotaph Road,
1st Lane, Teynampet,
Chennai-600 018 ...Respondent in Crl.O.P.No.10640/2013

M/s Shopper's Spot
rep by its Proprietor,
S. Manju Devi Bafna,
by Power Agent,
R. Sumerchand Bafna,
No.8/1, Centotaph Road,
1st Lane, Teynampet,
Chennai-600 018 ...Respondent in Crl.O.P.No.10641/2013

M/s S.K. Associates,
rep by its Proprietor,
S.K. Bafna,
by Power Agent,
R. Sumerchand Bafna,
No.8/1, Centotaph Road,
1st Lane, Teynampet,
Chennai-600 018 ...Respondent in Crl.O.P.No.14857/2013

Criminal Original Petitions filed under Sec.482 Cr.P.C to quash the complaints in C.C.Nos.3800 of 2012, 4301 of 2012 and 4521 of 2012 on the file of Fast Track Court No.III Metropolitan Magistrate Court, Saidapet, Chennai, and C.C.Nos.273, 274 of 2013 and 1469 of 2012 on the file of XVII Metropolitan Magistrate, Saidapet, Chennai.

For petitioner : Mr.K. Sridhar

For respondent : Mr.Aruna Ganesh

COMMON ORDER

Criminal Original Petitions filed under Sec.482 Cr.P.C to quash the complaints in C.C.Nos.3800 of 2012, 4301 of 2012 and 4521 of 2012 on the file of Fast Track Court No.III Metropolitan Magistrate Court, Saidapet, Chennai, and C.C.Nos.273, 274 of 2013 and 1469 of 2012 on the file of XVII Metropolitan Magistrate, Saidapet, Chennai.

2.The facts and the circumstances leading to filing of the present criminal original petitions, invoking provision under Sec.482 Cr.P.C, to quash various proceedings filed against the petitioner under sec.138 of Negotiable Instruments Act are as follows:

(a) One M/s Century Finance Corporation represented by its Proprietor, R. Sunilkumar Bafna, represented by Power Agent R. Sumerchand Bafna, has filed a complaint under Sec.138 of Negotiable Instruments Act. According to the complainant, the petitioner had approached the complainant in the first week of July 2011 for a loan of Rs.25,00,000/- to meet business exigencies and the said amount was advanced to the petitioner, who promised to repay the same at 18% interest and executed a demand promissory note dated 1.7.2011. The petitioner subsequently issued a cheque dated 4.7.2012 drawn on City Union Bank, T.Nagar, Chennai for a sum of Rs.20,00,000/-. The cheque was presented with Punjab National Bank on 7.7.2012 and returned from the City Union Bank with an endorsement "funds insufficient". A notice dated 8.7.2012 was issued and the same was received by the petitioner on 10.7.2012. On failure to pay the amount, the complaint was filed on 16.8.2012. The learned Magistrate took the case on file in CC No.3800 of 2012 on 16.8.2012.

(b) M/s Swasthik Finance Corporation represented by Proprietor Mr. Sumerchand Bafna also filed a complaint stating that the petitioner received Rs.50,00,000/- on the first week of July 2011 with a promise to repay the same with 18% interest and executed two demand promissory notes on 1.7.2011. On 4.7.2012, he issued two cheques, each for Rs.15,00,000/- drawn on City Union Bank, the same was presented to the union Bank of India on 4.7.2012 and returned by the drawee bank on the same day with an endorsement "funds insufficient". Notice was also issued and on failure, complaint filed and taken on file by the learned Magistrate on 7.8.2012 in CC No.4301 of 2012.

(c) M/s Vinitha Associates represented by its Director Mr.R. Sumarchand Bafna filed a complaint stating that the petitioner obtained a loan of Rs.50,00,000/- in July 2011 and executed two promissory notes on 1.7.2011 for each Rs.25,00,000/-. The petitioner also issued two cheques one for Rs.20,00,000/- and another for Rs.25,00,000/- dated 4.7.2012 drawn on City Union Bank and the same was presented and on the same day it was returned with an endorsement "insufficient fund". Notice was also issued and on failure, complaint filed and taken on file by the learned Magistrate on 13.8.2012 in CC No.273 of 2013.

(d) M/s Vinitha Resorts Ltd represented by its Director, R. Sumerchand Bafna, filed a complaint stating that the petitioner on the first week of July 2011 obtained a loan of Rs.20,00,000/- and executed a promissory note for Rs.20,00,000/- on 1.7.2011. On 9.7.2012, he issued two cheques drawn on City Union Bank,which were presented on the same day and returned with an endorsement "insufficient fund". Notice was also issued and on failure, complaint filed and taken on file by the learned Magistrate on 13.8.2012 in CC No.274 of 2013.

(e) M/s Shoppers Spot rep by its Proprietor Mrs. Manjudevi Bafna, reprented by power agent M/s Sumerchend Bafna filed a complaint stating that the petitioner on the first week of July 2011 obtained a loan of Rs.25,00,000/- and executed a promissory note for Rs.25,00,000/- on 1.7.2011. On 4.7.2012, he issued a cheque for Rs.10,00,000/-drawn on City Union Bank and presented and on the same day it was returned with an endorsement "insufficient fund". Notice was also issued and on failure, complaint filed and taken on file by the learned Magistrate in on 16.8.2012 CC No.4521/2012 of 2013.

(f) S.K. Associates, rep by its Proprietor, S.K. Bafna, through Power Agent, R. Sumerchand Bafna, filed a complaint stating that the petitioner on the first week of July 2011 obtained a loan of Rs.25,00,000/- and executed a promissory note for Rs.25,00,000/- on 1.7.2011. On 4.7.2012, he issued a cheque for Rs.20,00,000/-drawn on City Union Bank and presented and on the same day it was returned with an endorsement "insufficient fund". Notice was also issued and on failure, complaint filed and taken on file by the learned Magistrate in on 8.8.2012 CC No.1469/2012 .

3.Raising various grounds, more particularly on the ground that there is 'no legal liability' made out even on the evidence of the complainant, the petitioner has filed the present applications to quash the proceedings invoking the jurisdiction under Sec.482 Cr.P.C.

4.In all the applications, counter statement of the respondent/complainants have been filed and the sum and substance of the counter, in common, is as follows:

(1) Having received the statutory notices under the Negotiable Instruments Act, the petitioner/accused has neither replied nor complied with the demand but chosen to rush to this forum raising all the grounds.

(2) The complainants have already been examined by the learned Fast Track Court No.III, Metropolitan Magistrate court, Saidapet and the petitioner/accused has not chosen to participate in the trial and prove the alleged defence.

(3) When the trial is in progress, only after letting in evidence, a logical conclusion can be drawn and this Court cannot go into the merits of the matter, invoking jurisdiction under Sec.482 Cr.P.C.

5.However, the learned counsel for the petitioner/accused contended that when the transaction between the parties would not attract the ingredients of Sec.138 of Negotiable Instruments Act and when prima-facie case itself cannot be made out on the face of the record, continuation of the trial itself is an abuse of process of law and the aggrieved party to the proceedings can approach this court invoking provision under sec.482 Cr.P.C at any stage. He placed reliance on the following case laws :

i) 2013 (5) CTC 560 (A.C. Narayanan & another vs State of Maharashtra)

ii) 2006 (6) SCC 39 (M.s. Narayanan vs State of Kerala)

iii) 2008 (4) SCC 54 (Krishna Janardhan Bhat vs Dattatraya G Hege

iv) Crl.O.P.No.5935/2013 dated 16.7.2014 (V.P. Sheeba vs Asha)

v) Order passed by this Court dated 24.1.2001 (Angu Parameshwari Textiles vs Sri Rajam and Co)

6.The learned counsel for the respondents/complainant would oppose stating that the petition is devoid of merits and the petitioner, having failed to respond to the demands made under various notices, has committed the offence under Sec.138 of Negotiable Instruments Act and the Court cannot entertain these petitions at this stage and go into the merits of the matter. In short it was contended that the petitioner must face the trials.

7.Heard both sides and perused the materials available on record.

8.It is well settled that ordinarily the High Court will not interfere in any of the proceedings and that too, after commencement of trial, invoking the powers under Sec.482 Cr.P.C. When the trial started, it has to reach its own logical conclusion based on facts and evidence. However, certain legal issues are raised in the present applications, which goes into the roots of the matter, and this court is bound to look into them. The main contention of the petitioner is that the cheques were not drawn for payment of any amount for the discharge of any debt or other liability and to take cognizance the complainant should prima facie prove that there was a legal liability and the negotiable instruments were issued to discharge the same.

9.All the complaints are filed by six different financial institutions, out of which, only one is a private limited company and the others are proprietary concern.

10.One R.Sumerchand Bafna, who is the proprietor in one of the financial institutions viz., M/s Swastik Finance Corporation and Director of the two companies viz., M/s Vinitha Associates Ltd and M/s Vinitha Resorts Ltd has filed all the complaints in that capacity and also in the capacity of power agent to three other financial institutions, which are proprietary concerns. So, all the complainants are family concerns of the said Shri. R.Sumerchand Bafna.

11.Admittedly, there are multiple transactions between the petitioner and the financial institutions of the said Shri. R.Sumerchand Bafna and the presumption of consideration of the Negotiable Instruments, based on which the present complaints are filed, goes to the root of the matter.

12.When the trial Court proceeds on the presumption of consideration under the Negotiable Instruments Act, whether it is necessary for the accused to raise his defence, starting from the stage of reply to the statutory notice, pleading and to participate in the trial or can he discharge the burden on the basis of the materials already brought on record by the complainants? This would be the appropriate question to be answered.

13.The perusal of the materials placed before this court through the complainants would show that all the borrowings are on one and the same day viz., 1.7.2011 and totally, a sum of Rs.1,95,00,000/-

(Rupees one crore ninety five lakhs only) was borrowed as loan from six financial institutions where the said Sri R.Sumerchand Bafna represents all the creditors. Cheques of the City Union Bank which are almost in the running serial numbers have been issued, which bears almost the same date viz., 4.7.2012. Though the borrowings were stated to be in the year 2011, with the promise to repay with 18% interest, the cheques were issued in the year 2012 only for the principal amounts. All the cheques have been presented almost on the same date either on 4.7.2012 or 7.7.2012, which obviously returned with an endorsement "insufficient fund".

14.In all the cases, notices were sent almost on the same date viz., 8.7.2012 which were served almost on the same date viz., 10.7.2012 and the complaints are filed within a short period.

15.In each of the quash petition, the petitioner has filed certain details about repayment, admitting certain liability. Admittedly there were many transactions between the petitioner and the said Sri R.Sumerchand Bafna. The cheques were issued through one Besco Financial service, in which, the petitioner is the Director. Such issuance of cheques, through the said Besco Financial Service, is also admitted by the complainant by producing certain returned cheques by way of type set. These cheques were issued either to Century Finance Corporation or to S.K. Associates during the same transaction period.

16.When the petitioner has alleged certain payments by way of cheques through Besco Financial Service, the complainants have produced the returned cheques to show that those cheques issued by Besco Financial Services were also bounced. However, in the same breath, the complainants would also allege that on the first week of July 2011, that is, in spite of the petitioners cheques being bounced, in different transactions, the complainants have advanced a huge amount of Rs.1,95,00,000/- as loan. A chronic defaulter is advanced with huge amounts. The alleged date of borrowings, execution of promissory notes, absence of demand for repayment for almost one year, and sudden allegation of issuance of cheques almost on the same dates for the principal alone which bounced would show that the negotiable institutions would not have been issued in the manner alleged. Though the petitioner has rushed to this court without proper reply or pleading or let in evidence before the trial court, the materials placed by the complainants, would only go to show that there were and are many transactions between the parties and cheques have been obtained for security purposes and no presumption can be drawn by production of the series of cheques in different names of the same family and family concern.

17.In 2008 (4) SCC 54 (Krishna Janardhan Bhat vs Dattatraya G Hege), the Apex Court has held as follows :

> 29. Section 138 of the Act has three ingredients viz.,
> (i) that there is a legally enforceable debt;
> (ii) that the cheque was drawn from the account of bank for discharge in whole or in part of any debt or other liability which presupposes a legally enforceable debt; and
> (iii) that the cheque so issued had been returned due to insuffiecency of funds.
>
> 30. The proviso appended to the said section provides for compliance with legal requirements before a complaint petition can be acted upon by a court of law. Section 139 of the Act merely raises a presumption in regard to the second aspect of the matter. Existence of legally recoverable debt is not a matter of presumption under Section 139 of the Act. It merely raises a presumption in favour of a holder of the cheque that the same has been issued for discharge of any debt or other liability.
>
> 31. The courts below, as noticed herein before, proceeded on the basis that Section 139 raises a presumption in regard to existence of a debt also. The courts below, in our opinion, committed a serious error in proceeding on the basis that for proving the defence the accused is required to step into the witness box and unless he does so he would not be discharging his burden. Such an approach on the part of the courts, we feel, is not correct.
>
> 32. An accused for discharging the burden of proof placed upon him under a statute need not examine himself. He may discharge his burden on the basis of the materials already brought on record. An accused has a constitutional right to maintain silence. Standard of proof on the part of an accused and that of the prosecution in a criminal case is different. (emphasis supplied)

The facts of the case in the above case law is almost similar to the case on hand. This court is required to look into the probability of the complainants advancing a huge sum of Rs.1,95,00,000/- within a period of one week, where it is admitted that there were and are transactions between the parties and payments were made through cheques and were returned dishonored even during the transaction period. At the risk of repetition, this court restates the chronology of the events, viz;

i) all the borrowings are one and the same day viz., 1.7.2011 and totally, a sum of Rs.1,95,00,000/-(Rupees one crore ninety five lakhs only) was borrowed as loan from six financial institutions where the said Sri R.Sumerchand Bafna represents all the creditors.

ii) these amounts were advanced even when the other cheques issued by the petitioner being bounced in the same period.

iii) Cheques of the City Union Bank which are almost in the running serial numbers have been issued, which bears almost the same date viz., 4.7.2012 except in one complaint which is dated 9.7.2012.

iv) Though the borrowings were stated to be in the year 2011, with the promise to repay with 18% interest, the cheques were issued in the year 2012 only for the principal amounts.

v) All the cheques have been presented almost on the same date either on 4.7.2012 or 7.7.2012, which obviously returned with an endorsement "insufficient fund".

vi) In all the cases, notices were sent almost on the same date viz., 8.7.2012 which were served almost on the same date viz., 10.7.2012 and the complaints are filed within a short period.

18.It is highly improbable, that these Negotiable Instruments were supported by consideration and there was legally enforcible debt for which the alleged cheques were issued. When section 138 of the Negotiable Instruments Act attaches criminal liability for the transactions which are otherwise civil liability, the parties can not be allowed to misuse the same and such cases need Judicial scrutiny.

19.In 1999 Current Criminal Reports 424, (Balaji Sea Food Exports (India) Ltd., vs Mac Industries, this Court held that undated cheques given as security and bounced would not attract the Provision of 138 of the Negotiable Instruments Act.

20. In (1998) 5 SCC 749 Pepsi Foods Ltd., vs Special Judicial Magistrate, the Apex Court held that no doubt the Magistrate can discharge the accused at any stage of the Trial if he found the charge to be groundless but that does not mean that the accused cannot approach the High Court under section 482 of Cr.P.C or under Article 227 of the Constitution of India to have the proceeding quashed against him when the complainant does not make out any case against him and still must undergo the agony of a criminal trial.

21.In (1998) 7 SCC 698 Ashok Chturvedi vs Shitul H.Chanchani the Apex Court observed that the accused can approach the High Court by an application under section 482 if the complainant does not disclose any offence even if he has a right to argue the grounds before the Magistrate.

22.Following the above decisions the High Court of Gujarat in Shanku Concretes Pvt. Ltd., vs State reported in TLGJ-1999-0-590, held that 'Therefore, the accused has right to approach the High Court at any stage for quashing with the allegations that the complainant prima facie does not disclose any offence. In such circumstances, when it appears to the High Court under section 482 Cr.P.C that the complainant does not disclose any offence, it has ample powers to quash the proceeding and the accused need not in all cases be relegated to the learned Magistrate”

23.In the case on hand, the chronology of the events and the materials already brought before the court would show that the negotiable instruments could not have been issued in the manner alleged and this court can easily come to a conclusion that such transaction would not have happened and there is no legally enforceable liability or passing of consideration on the individual cheques, which is the subject matter of all the complaints.

24.When an accused person can discharge the burden of proof placed upon him on the basis of the materials already brought on record, this court is of the considered view that the complainants have not made out a prima facie case disclosing any offence under section 138 of the Negotiable Instruments Act and it is a fit case to be interfered with exercising the powers under Secc.482 Cr.P.C.

25.In the result, all the petitions are allowed and the proceedings in C.C.Nos.3800 of 2012, 4301 of 2012 and 4521 of 2012 on the file of Fast Track Court No.III Metropolitan Magistrate Court, Saidapet, Chennai, and C.C.Nos.273, 274 of 2013 and 1469 of 2012 on the file of XVII Metropolitan Magistrate, Saidapet, Chennai are quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

To

1.The Metropolitan Magistrate,
The Fast Track Court No.III
Saidapet, Chennai.

2.The XVII Metropolitan Magistrate,
Saidapet, Chennai.

Crl.O.P.Nos.10637, 10638,
10639, 10640, 10641 and
14857 of 2013

MSM [CO]
PSI 12.08.2015