IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.S.RAMANATHAN

Crl.O.P.No.15371 of 2009
and
M.P.No.1 of 2009

Devdutt R.R.Sikka ...Petitioner

Versus

M/s.Sajjanraj Nahar & Sons
represented by its Karta
Mahendrakumar Nahar
represented by Power Agent
G.Angamuthu ...Respondent

Petition filed under Section 482 Cr.P.C to call for the records and quash the private complaint proceeding pending in C.C.No.333 of 2007 on the file of learned Judicial Magistrate No.II, Coimbatore.

For Petitioner : Mr.P.M.Duraiswamy

For Respondent : No appearance

O R D E R

The petitioner is the accused in C.C.No.333 of 2007 on the file of the learned Judicial Magistrate No.II, Coimbatore. The respondent herein filed the above directed complaint under Section 138 of the Negotiable Instruments Act stating that the petitioner/accused issued a cheque for Rs.4,78,000/- in favour of the respondent and when the cheque was presented for collection, the same was returned with an endorsement ''account closed'' and even after the receipt of statutory notice and on failure of the petitioner in repaying the amount, the complaint was filed.

2. It is submitted by the learned counsel for the petitioner that the cheque was not issued towards legally enforceable debt. According to him, the respondent/complainant had stated in the complaint that the petitioner borrowed a sum of Rs.4,00,000/- from the respondent and executed a promissory note dated 02.05.2005 and agreed to pay the same with interest at the rate of 18% per annum and to show his bonafide in repaying the principal amount with interest, the petitioner/accused as Proprietor of M/s.Mona Knitwear issued a cheque dated 15.06.2006 for a sum of Rs.4,78,000/- and the cheque was the subject matter of the prosecution.

3. The learned counsel for the petitioner further submitted that as per Section 2(6) of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, ''loan'' means an advance of money for daily vatti, hourly vatti, kandhu vatti, meter vatti or thandal and as per Section 2(5) of the said Act, ''Kandhu Vatti'' means an interest which will work out to an interest rate more than that fixed by the Government under Section 7 of the Money Lender's Act. He further submit that under Section 7 of the Tamil Nadu Money Lenders Act, no money-lender shall charge interest on any loan, at a rate exceeding such rate as the Government may, by notification, fix from time to time and as per G.O.Ms.No.406, Co-operation Department dated 05.07.1979, the rate of interest in respect of secured loan should not exceed 9% simple interest per annum and in respect of unsecured loan 12% simple interest per annum and therefore, the claim of the respondent claiming 18% interest per annum on the principal amount is against the provisions of the Money Lender's Act and in particular G.O.Ms.No.406 referred to above and therefore, the cheque was not issued towards legally enforceable debt and therefore, the dishonour of the cheque cannot be the subject matter of the prosecution.

4. I am unable to accept the contention of the learned counsel for the petitioner. As stated supra, in the complaint it has been stated that the petitioner executed a promissory note dated 02.05.2005 for the sum of Rs.4,00,000/- and agreed to pay interest at the rate of 18% per annum. It is further stated that the petitioner to show his bonafide in repaying the principal amount with interest at Rs.4,00,000/-, issued the cheque for Rs.4,78,000/- and the said cheque was the subject matter in this order. The respondent/complainant did not say Rs.4,78,000/- was arrived at by calculating interest at the rate of 18% per annum. 18% per annum on Rs.4,00,000/- will come to Rs.72,000/- and therefore, in the absence of any particulars stated in the complaint, it cannot be presumed that the cheque for Rs.4,78,000/- was issued towards interest at the rate of 18% per annum on the principal amount of Rs.4,00,000/-.

5. Further under the proviso to sub-section 1 of Section 7, the rate of interest so fixed shall be correlated to the current bank rates of lending as may be fixed by the Reserve Bank of India from time to time. Therefore, the money-lenders can charge interest as per the current bank rates of lending as may be fixed by the Reserve Bank of India from time to time and as per G.O.Ms.No.406, which was issued in the year 1979, the rate of interest for unsecured loan was 12% per annum and for secured loan was 9% per annum. The learned counsel for the petitioner is not able to furnish the lending rate of Banks in the month of June 2005 to substantiate his contention that the rate of interest at the rate of 18% per annum is exorbitant as per the provisions of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003. In the absence of such particulars, it cannot be stated that the cheque was issued for legally unenforceable debt and therefore, the prosecution has to be quashed. Therefore, I do not find any merit in the contention of the learned counsel for the petitioner.

6. The criminal original petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

mra

To

1. The Judicial Magistrate No.II
Coimbatore.

2. The Public Prosecutor,
High Court, Madras

Crl.O.P.No.15371 of 2009
and
M.P.No.1 of 2009

KJI (CO)
PSI (21.05.2015)