

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.06.2015

DELIVERED ON : 17 .06.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP Nos.27384 and 27407 of 2013 and M.P.Nos.1 and 1 of 2013

Riyazith Farooq ... Petitioner in both Crl.O.Ps./Accused
Vs

M.Kuthbutheen ... Respondent in both Crl.O.Ps/Complainant

Prayer:- Criminal Original Petitions filed under Section 482 Cr.P.C., to quash the entire complaint in C.C.Nos.2443 and 8316 of 2008 respectively pending on the file of III Fast Track Court, Saidapet, Chennai 600 015.

For Petitioner Mr.N.Rajavadivelu
For Respondent Mr.K.Selvaraj

ORDER

The sole accused in C.C.Nos.2443 and 8316 of 2008 pending on the file of III Fast Track Court, Saidapet, Chennai, is the petitioner in both the cases.

2. For the sake of convenience, the parties will be referred to as the complainant and the accused.

3. It is the case of the complainant that he is carrying on business in ready-made garments in the name and style of 'P.M.S. Dresses' and that he supplied materials to the accused, who was carrying on business in Malaysia. Towards the supplies, the accused has to pay a sum of Rs.13 lakhs to the complainant and when the complainant demanded the amount, the accused issued the cheques impugned in the two complaints, which when presented by the complainant were dishonoured and after the issuance of statutory notice under Section 138 of the Negotiable Instruments Act, the complainant has lodged the two complaints which are under challenge before this Court.

4. Mr.N.Rajavadivelu, learned counsel appearing for the accused submitted that the cheques were given only as security and not towards any legally enforceable debt.

5. On a reading of the complaint the complainant has clearly stated that, the accused had paid the cheques towards the subsisting liability and not as a security, as contended by Mr.Rajavadivelu. The learned counsel appearing for the complainant relied upon the judgment of the Supreme Court in HMT Watches Ltd v. M.A.Abida and another [2015(2) CTC 446], wherein, the Supreme Court has very clearly held that this Court in exercise of its power under Section 482 Cr.P.C., should not go into the disputed questions of fact which have to be determined only by the trial Court, after recording evidence from the parties. The Supreme Court has very categorically stated as follows:

"Whether the Cheques were given as security or not, or whether there was outstanding liability or not is a question of fact which could have been determined only by the Trial Court after recording evidence of the parties. In our opinion, the High Court should not have expressed its view on the disputed questions of fact in a Petition under Section 482 of the Code of Criminal Procedure, to come to a conclusion that the offence is not made out. The High Court has erred in law in going into the factual aspects of the matter which were not admitted between the parties."

6. Mr.M.Rajavadivelu, learned counsel further submitted that a civil suit in C.S.No.675 of 2007 has been filed by the complainant against the accused and during the pendency of the suit, the present prosecution is not maintainable. This Court is unable to persuade itself to agree with the submission, because the remedy in civil law is different and distinct from prosecution under Section 138 of the Negotiable Instruments Act which is essentially a penal provision for the offence of dishonour of cheques.

In the result, these petitions are devoid of merits and the same are dismissed. Consequently, connected miscellaneous petitions are closed.

gms

सत्यमेव जयते

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To
III Fast Track Court, Saidapet,
Chennai 600 015.

+ 1 cc to Mr.K.Selvaraj, Advocate SR 29599

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prk25/6

Cr1.OP Nos.27384 and 27407 of 2013