

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

Crl.O.P.No.1157 of 2016

and

Crl.M.P.No.511 of 2016

1.Creature Export Firm
Rep by Partner R.Velumani

2.R.Velumani

3.V.Kousalya

... Petitioners/Accused 1 to 3

Vs.

C.Kesavan

... Respondent/Complainant

Prayer: Petition filed under Section 482 of Cr.P.C. to call for records of S.T.C.No.1429/2011 on the file of the Judicial Magistrate No.II, Erode and quash the private complaint therein u/s.200 Cr.P.C r/w Sections 138 & 142 of Negotiable Instruments Act, as unwarranted to be proceeded with and an abuse of process of law within the meaning of Section 482 Cr.P.C.

For Petitioner : Mr.M.Kalyanasundaram, Senior Counsel
for Mr.R.Vasudevan

For Respondents : Mr.M.Abdul Razack

O R D E R

Heard the learned Senior Counsel appearing for the petitioners and the learned counsel appearing for the respondent.

2. The petitioners have come forward with the present Criminal Original Petition to quash the case in S.T.C.No.1429/2011 pending on the file of the Judicial Magistrate No.II, Erode for the offences punishable under Section 138 of the Negotiable Instruments Act. The case of the respondent/complainant is that the petitioners herein had

borrowed a sum of Rs.9,00,000/- on 05.01.2011 for urgent business purposes and to discharge the same, the petitioners had issued the cheque. However, when the said cheque was presented for encashment, it was returned as 'insufficient funds'. Hence, after the issuance of statutory notice, the present complaint has been preferred.

3. The learned Senior Counsel appearing for the petitioners would submit that the petitioner had actually borrowed a sum of Rs.5,00,000/- from one Bharath Kumar of Tiruppur, where the petitioners were doing business. At the time of borrowal, the said Bharath Kumar took blank signed pro-notes, blank stamp papers and blank white sheets and 3 signed cheques. Thereafter, he filed a suit in O.S.No.113 of 2011 on the file of the II Additional Judge, Tiruppur contending that the petitioners had borrowed a sum of Rs.15,00,000/- from him and also obtained a decree, against which an appeal in A.S.No.384 of 2015 is pending before this Court. While so, the said Bharath Kumar had given a cheque given by the petitioners to his father-in-law, C.Kesavan, who is the respondent herein.

4. The respondent herein had filled up the said cheque for a sum of Rs.9,00,000/- and presented the same for encashment. when the cheque was returned as 'insufficient funds', he had invoked Section 138 of the Negotiable Instruments Act and preferred a complaint against the petitioners. The learned Senior Counsel would further contend that after the filing of the Criminal Complaint, the respondent had also filed a suit in O.S.No.33 of 2014 for recovery of amount due on cheque. Hence, the learned Senior Counsel would contend that as the respondent had initiated a Civil Suit, the criminal proceedings in S.T.C.No.1429/2011 had to be quashed. To support the said contention, the learned Senior Counsel relied upon the decision reported in (2013) 11 Supreme Court Cases 673, Paramjeet Batra v. State of Uttarakhand and others and prayed for an order.

5. Resisting the same, the learned counsel appearing for the respondents would submit that already evidence was over and the case is posted for arguments from 08.01.2016 onwards. Hence, only with a view to drag on the proceedings, the petitioners have come forward with the present application to quash the proceedings. The learned counsel further submitted that mere filing of a suit for recovery of money will not take away the criminal liability of the petitioner and hence, he prayed for dismissal of the petition.

6. Considered the rival submissions made by both sides and perused the typed set of papers.

7. The respondent herein as complainant had preferred a complaint under Section 138 of the Negotiable Instruments Act stating that on 05.01.2011, the second petitioner on behalf of the first petitioner had borrowed a sum of Rs.9,00,000/- for urgent business purposes for development of the firm with the consent of the third petitioner. On the same date, in order to discharge the liability, the second petitioner issued a cheque dated 28.04.2011 for a sum of Rs.9,00,000/-. However, when the cheque was presented for encashment on 06.05.2011, it was returned as 'insufficient funds'. Hence, after issuance of statutory notice under Section 138(b) of the Negotiable Instruments Act, the present complaint has been preferred.

8. It is pertinent to note that already evidence on both sides was over and the case is posted for arguments from 08.01.2016 onwards. While so, the present petition came to be filed on 12.01.2016. Merely because of the pendency of this Criminal Original Petition, the matter before the Trial Court is adjourned periodically. Further, the signature in the instrument has not been disputed by the petitioner. However, it is only stated that they had borrowed a sum of Rs.5,00,000/- from one Bharath Kumar, who is none other than the son-in-law of the respondent. At the time of borrowal, he had obtained blank signed pro-notes and 3 signed cheques, out of which one cheque is used by the respondent to file the present complaint. The issue whether the cheque has been issued to the respondent has to be decided only at the time of trial, after letting in oral and documentary evidence.

9. According to the learned counsel appearing for the respondent, the evidence was already over and the matter is now posted for arguments. So, the point whether the cheque had been issued to the respondent has to be decided by the Trial Court and not before this Court. Now the only point to be decided is whether the suit in O.S.No.33 of 2014 for recovery of money due on cheque has exonerated the petitioner from the Criminal liability?

The learned Senior Counsel appearing for the petitioner has relied upon the decision reported in (2013) 11 Supreme Court Cases 673, Paramjeet Batra v. State of Uttarakhand and others and he had drawn my attention to paragraphs 12 and 13 which reads as follows:

"12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not

depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash criminal proceedings to prevent abuse of process of court.

13. As we have already noted, here the dispute is essentially about the profit of the hotel business and its ownership. The pending civil suit will take care of all those issues. The allegation that forged and fabricated documents are used by the appellant can also be dealt with in the said suit. Respondent 2's attempt to file similar complaint against the appellant having failed, he has filed the present complaint. The appellant has been acquitted in another case filed by respondent 2 against him alleging offence under Section 406 of the IPC. Possession of the shop in question has also been handed over by the appellant to respondent 2. In such a situation, in our opinion, continuation of the pending criminal proceedings would be abuse of the process of law. The High Court was wrong in holding otherwise."

There is no quarrel over the said proposition. But the above citation is not applicable to the facts of the present case on hand because the cheque was issued on 05.01.2011 with post dated 28.04.2011. Since, the petitioner has not repaid the amount, the cheque was presented. Merely because the respondent had filed the suit in the year 2014, it will not exonerate the criminal liability. The Hon'ble Apex Court has held that even if the cheque amount is paid, the criminal liability shall not be exonerated from the accused.

10. In such circumstances, the argument advanced by the learned Senior Counsel appearing for the petitioner that the filing of the suit in O.S.No.33 of 2014 will exonerate the petitioners from the criminal liability does not merit acceptance. Hence, I do not find any reason to quash the proceedings in S.T.C.No.1429/2011 on the file of the Judicial Magistrate No.II, Erode and the Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

11. However, since the proceedings in S.T.C.No.1429/2011 on the file of the Judicial Magistrate No.II, Erode is posted for arguments, the learned Trial Judge is directed to dispose of the same on merits and in accordance with law, within a period of one month from the date of receipt of a copy of this order.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

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To

1. The Judicial Magistrate No.II
Erode

2. do thro the Chief Judicial Magistrate
Erode

1 cc to M/s. Abdul Razack, Advocate, sR. 10884

1 cc to Mr.r. Vasudevan, Advocate, Sr. 10485

Cr1.O.P.No.1157 of 2016
and
Cr1.M.P.No.511 of 2016

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