IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2016

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THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Crl.O.P No.24682 of 2011

and M.P.No.1 of 2011 and M.P.No.1 of 2012

T.M.Sampath ...Petitioner/Accused

Vs.

K.K.S.Jeyaraman ...Respondent/Complainant

Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in STC No.357 of 2010 on the file of the Judicial Magistrate II, Chengalpattu and consequently, quash the same as illegal improper and not maintainable in law.

For Petitioner : Mr.D.Stephen for M/s. Shalom Associates

For Respondent : Mr.M.Rajasekhar

ORDER

This Criminal original Petition is filed under Section 482 of the Code of Criminal Procedure, 1973, seeking to quash Section 138 proceedings under Negotiable Instruments Act in S.T.C.No.357 of 2010 on the file of the Judicial Magistrate II, Chengalpet as illegal, improper and not maintainable in law.

2. The petitioner / accused averred in the petition that the petitioner introduced one Arul to the complainant and land deal was made between them; that the cheque was obtained from the petitioner on 08.03.2010 by use of wrongful force and unlawful means from the petitioner; that the petitioner issued a suit notice on 04.04.2010 and also issued a letter to his Banker on 03.05.2010 for stop payment; that the cheque is not for an legally enforceable debt or liability; that the registration of criminal case against the petitioner under Section 138 of Negotiable Instruments Act amounts to misuse of the process of

law and therefore, the case pending before the Judicial Magistrate under Section 138 of Negotiable Instruments Act is to be quashed.

3. The learned counsel appearing for the petitioner contends reiterating the points in the petition that the disputed cheque was extorted from the petitioner as he introduced one Arul to the respondent / complainant for the land deal and the cheque is not for any legally enforceable debt or liability and therefore, letter was issued by the petitioner to the Banker for stop payment and therefore, proceedings under Section 138 of Negotiable Instruments Act is not maintainable. It is further contended that simultaneous proceedings under Section 138 of Negotiable Instruments Act as well as the registration of criminal case is nothing to misuse of process of law.

4. The learned counsel appearing for the respondent per contra contends that the petitioner is party to the fraud and he issued cheque to the respondent admitting his liability and issuance of letter for stop payment does not absolve from his liability under Section 138 of Negotiable Instruments Act.

5. In the FIR filed against the petitioner and others on the basis of the complaint given by the respondent before the police, it is mentioned that advance of Rs.1 lakh was paid on the same date when the petitioner introduced Arul and the balance consideration paid in the presence of the petitioner and document was registered in the Sub-Registrar Office. The learned counsel appearing for the petitioner showing this argued that the petitioner has not received any amount, even as per the FIR and therefore, liability on his part does not arise. With respect to liability, it is for the petitioner to rebut the presumption and establish his stand before the trial Court.

6. There is no dispute that cheque has been issued by the petitioner. The only contention of the petitioner is that the cheque was taken by the complainant forcibly. Whether the cheque was obtained forcibly or not is to be established only through evidence, during trial.

7. Sending letter to the Banker to stop payment does not take away the presumption in favour of the holder under Section 139 of Negotiable Instruments Act. The learned counsel appearing for the respondent cited the Supreme Court Judgment in Modi Cements Ltd., v. Shri Kuchil Kumar Nandi, reported in 1998 (I) CTC 402. In this ruling, it has been held as follows :

> "11. Another two Judge Bench while dealing with the same question in K.K.Sidharthan v. T.P.Praveena Chandran & Anr., 1996 (I) CTC 193 : JT 1996 (9) SC 191 : 1996 (6) SCC 369 observed, "This shows that Section 138 gets attracted in terms if cheque is dishonoured because of insufficient funds or where the amount exceeds the arrangement made with the bank. It has, however, been held by a Bench of this Court in Electronics Trade and Technology Development Corpn. Ltd., v. Indian Technologists and Engineers (Electronics) (P) Ltd., JT 1996 (1) SC 643 that even if a cheque is dishonoured because of 'stop payment' instruction to the bank, Section 138 would get attracted". We are in complete agreement with the above legal proposition."

From the above ruling, it is clear that Section 138 of Negotiable Instruments Act is attracted even if the cheque is dishonoured due to "stop payment" instruction. Merely because the drawer issued notice to the Bank for stoppage of the payment, it will not preclude the action under Section 138 of Negotiable Instruments Act. Therefore, the contention of the petitioner that proceedings under Section 138 of Negotiable Instruments Act is not maintainable due to 'stop payment' instructions issued by the petitioner is not tenable.

8. Another contention that simultaneous proceedings under Section 138 of Negotiable Instruments Act and criminal action with the police is also not sustainable. It is seen from the FIR that case has been registered against the petitioner for the offence under Sections 120 (B), 419, 465, 468 and 471 IPC. Therefore, registering the case regarding cheating, forgery etc., does not preclude the respondent from initiating proceedings under Section 138 of Negotiable Instruments Act.

9. It is also pertinent to note that after initiation of proceedings under Section 138 of Negotiable Instruments Act, civil suit was also filed by the respondent in 2013. Criminal proceedings does not also preclude the respondent from filing civil suit to recover money. Therefore, in any angle, the contentions of the petitioner are not sustainable and accordingly, this Criminal Original Petition is liable to be dismissed.

In fine, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are also dismissed. The trial Court is directed to dispose of the STC No.357 of 2010, within four months from the date of receipt of a copy of this order and report the same to the Registry. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Judicial Magistrate II
   Chengalpattu.

2. The Public Prosecutor,
   High Court of Madras, Chennai.

+1 cc to Mr.M.Raja Sekhar Advocate sr 44823
+2 ccs to M/s.Shalom Associates sr 45367

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