IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Crl.O.P.No.24516 of 2014
and
M.P.No.1 of 2014

R.Jayanthi ... Petitioner

Vs

K.Yasodha ... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records pertaining to C.C.No.948 of 2013 pending on the file of the learned Judicial Magistrate at Tambaram and to quash the same.

For Petitioner : Mr.L.Ramu

For respondent : Mr.R.Sivakumar

O R D E R

This criminal original petition has been filed by the petitioner praying to quash the criminal proceedings in C.C.No.984 of 2013 pending on the file of the learned Judicial Magistrate, Tambaram, against the petitioner for the alleged offence punishable under Section 138 of Negotiable Instruments Act.

2.The respondent herein/complainant filed a private complaint against the petitioner herein before the learned Judicial Magistrate, Tambaram. In the complaint, it has been averred by the respondent/complainant as follows:-

2-1.The petitioner herein is the friend of the respondent/complainant and on 10.05.2010, the petitioner came to her home and borrowed a sum of Rs.5 lakhs from her. The petitioner executed a Promissory Note dated 10.05.2010 in favour of the respondent/complainant, promising to repay the principal amount with interest at the rate of 24% per annum. The petitioner/accused had also handed over an undated cheque bearing No.469298, drawn on Indian Bank, Chitlapakkam Branch, Chennai, for a sum of Rs.5 lakhs, as collateral security to the respondent/complainant. At the time of handing over the said cheque, the petitioner/accused stated that the said cheque may be deposited by the respondent/complainant as and when requested by her. It is further stated by the respondent/complainant that apart from the above said borrowal amount, the petitioner has also borrowed a sum of Rs.1 lakh from the complainant's son Mr.Ramesh on interest at the rate of 24% per annum, on 07.05.2011. Further, as an agent of M/s.Fortune Enterprises, the petitioner/accused approached the respondent/complainant, stating that if the respondent/complainant pays Rs.2 lakhs, the same would be returned as double or above the amount. Believing the petitioner's words, the respondent gave a sum of Rs.2 lakhs on 07.11.2011 to the petitioner/accused. Apart from the above amount, the respondent's husband's friend Mrs.Vasantha has also given a sum of Rs.2 lakhs through the respondent/complainant to the petitioner/accused on 27.11.2011 and that the petitioner had promised to return the same as Rs.4,30,000/- on 31.10.2012 and that she has issued a card on behalf of M/s.Fortune Enterprises. While so, on 31.10.2012, when the respondent went to the petitioner's house and claimed Rs.4,30,000/- as promised by her for the Vasantha's money, the petitioner had requested the respondent to come on 31.12.2012. Hence, the respondent went to the petitioner's house on 31.12.2012 and claimed the total sum of Rs.9 lakhs i.e, Rs.4,30,000/- and Rs.4,70,000/- as promised by the petitioner on behalf of Fortune Enterprises; but, the petitioner stated that the owner of Fortune Enterprises Mr.R.Srinivasan cheated all the persons who have invested the money and that she won't give money as promised. Further, the petitioner has assured that all the money borrowed on behalf of Fortune Enterprises will be returned back at the earliest.

2-2.During the first week of March, 2013, the respondent went to the petitioner accused and requested to payher principal amount of Rs.5 lakhs together with interest; but, the petitioner requested the respondent to deposit the cheque bearing No.469298, drawn on Indian Bank, Chitlapakkam Branch, Chennai. Again, before depositing the cheque, the respondent wanted to confirm it; hence, she asked the petitioner as to whether she could deposit the cheque on 20.03.2013. As per the request of the petitioner, the respondent deposited the cheque issued by the petitioner, bearing No.469298, dated 12.03.2013 for Rs.5 lakh, drawn on Indian Bank, Chitlapakkam, Chennai-64, for collection through her bank on 20.03.2013, but, the said cheque was returned on 22.03.2013, as unpaid due to insufficiency of funds in accused's bank account to honour the said cheque with a memo with an endorsement as “Funds Insufficient”. Immediately, the respondent informed the same to the petitioner. The petitioner again requested the respondent to redeposit the returned cheque on 22.05.2013. Again the respondent represented the said cheque for collection through her banker on 22.05.2013; but, the said cheque was again returned on 22.05.2013 on the same ground. Thereafter, the respondent issued a lawyer's notice dated 30.05.2013 to the petitioner by RPAD as contemplated under Section 138 of the Negotiable Instruments Act, demanding the payment of money due under the said dishonoured cheque. But, the said RPAD cover was returned on 10.06.2013 with an endorsement that 'Intimation Delivered" and " unclaimed", which amounts to refusal. Hence, the respondent has preferred the private complaint before the learned Judicial Magistrate at Tambaram. Now, the petitioner has come forward with the present petition seeking to quash the complaint.

3.It is the main submission of the learned counsel for the petitioner that even as per the averments in the complaint, the said cheque was given only as a collateral security and not for any other reason; but, the respondent/complainant used the said cheque with mala fide intention and filed the present complaint. In this regard, the learned counsel for the petitioner has also relied upon the judgment reported in 1999(1) CTC 6 [Balaji Seafoods Exports (India) Ltd., Vs. Mac Industries Ltd.], wherein it has been held by the learned Single Judge of this Court that as an undated cheque having been given only as security, the provisions of Section 138 of Negotiable Instruments Act are not at all attracted and hence, the complaint cannot be maintainable.

4.As second fold of submission, the learned counsel for the petitioner has submitted that the respondent/complainant has filled up the date on the alleged cheque given by the petitioner as 12.03.2013; whereas even as per the averments in the complaint, the cheque was given only in the year 2010; therefore, on the date of drawal of the cheque, there was no legally enforcible debt or liability as against the petitioner. Hence, according to the petitioner, on that ground also, the complaint is liable to be quashed. In this regard, the learned counsel for the petitioner has also relied upon the judgment reported in (2014)12 SCC 539 [Indus Airways (P) Ltd., Vs. Magnum Aviation (P) Ltd.].

5.But, the learned counsel for the respondent submitted that though the said cheque was given as collateral security, in the complaint it was clearly explained that only on the request made by the petitioner, the respondent/complainant has deposited the cheque on 20.03.2013; when the same was returned, again on the request of the petitioner, the respondent represented the same on 22.03.2013, which was returned once again. Therefore, in the peculiar circumstances of the case on hand, the judgment relied upon by the learned counsel for the petitioner cannot be made applicable to the present case.

6.The learned counsel for the respondent, by relying upon the judgment reported in 2015(8) SCC 378 [T.Vasanthakumari Vs. Vijayakumari], submitted that the since in the signature in the cheque as well as issuance of the cheque were accepted by the petitioner/accused, the burden is only on the petitioner/accused to prove that on the date of drawal of the cheque, there was no legally enforcible debt or liability. Therefore, according to the learned counsel for the respondent, the complaint cannot be quashed. Thus, he sought for dismissal of the petition.

7.Heard the submissions made on either side and perused the materials available on record.

8.The submissions made by the learned counsel for the petitioner are on two folds.

> (1)The cheque was given only as a collateral security; therefore, Section 138 of the Negotiable Instruments Act will not be attracted.
>
> (2)On the date of drawal of the cheque, there was no legally enforce debt, payable by the petitioner to the respondent.

9.But, in my considered opinion, as contended by the learned counsel for the respondent, though the cheque was given as collateral security, specific averment was made in the complaint to the effect that only on the request made by the petitioner, the respondent presented the cheque with her banker on 20.03.2013; when it got dishonoured, again on the request of the petitioner, the cheque was again deposited by the respondent, which was dishonoured once again. In view of the said specific averment made in the complaint, I am of the opinion that the judgment relied upon by the learned counsel for the petitioner cannot be made applicable to the present case. The entire issue involved in this case has to be decided only after conducting trial. Therefore, in view of the specific averment in the complaint that the cheque was presented only on the instruction of the petitioner, the matter has to be decided only after the trial.

10.Secondly, when the petitioner himself has accepted his signature in the cheque and the issuance of cheque, the defence of the petitioner that there was no legally enforcible debt on the date of drawal of the cheque, has also to be decided only after conducting trial.

11.Hence, I am of the opinion, no case has been made out by the petitioner to quash the complaint and the present petition is liable to be dismissed.

12.In fine, the criminal original petition is dismissed. Consequently, connected Miscellaneous Petition is closed. However, the Trial Court is directed to complete the trial and dispose of the case, within a period of six months from the date of receipt of a copy of this order.

ssv

-s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To

1.The Judicial Magistrate, Tambaram.

2.Do thro the Chief Judicial Magistrate,
Chengalpattu.

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