

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 22.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.O.P.No.1497 OF 2014 &

M.P.No.1 of 2014

A.Rajasekar

.. Petitioner

versus

L.Bhoopathi

... Respondent

Prayer: This petition is filed under Section 482 Cr.P.C., praying to call for the records in S.T.C.No.57 of 2013 pending on the file of the Judicial Magistrate Court, FTC, Tiruppur and quash the same.

For Petitioner : Mr.O.Selvam

For Respondent No.1 : Ms.P.T.Asha

ORDER

This petition is filed, praying to call for the records in S.T.C.No.57 of 2013 pending on the file of the Judicial Magistrate Court, FTC, Tiruppur and quash the same.

2. For the sake of convenience, the parties will be referred to by their names.

3. It is the case of Bhoopathi that Rajasekar used to borrow money from him frequently and as such, he owes a sum of Rs.18,59,000/- as on 15.12.2010 to him. Rajasekar executed a loan settlement agreement in favour of Bhoopathi and pursuant to which, he issued two cheques for Rs.13,50,000/- and Rs.5,09,000/- in favour of Bhoopathi, which on presentation, were dishonoured. Bhoopathi issued a legal notice on 25.6.2011 and since Rajasekar did not comply with the demand, has instituted a prosecution vide S.T.C.3992 of 2011 before the Judicial Magistrate No.1, Tiruppur, under Section 138 of Negotiable Instruments Act. Challenging the same, Rajasekar is before this Court.

4. Learned counsel appearing for Rajasekar would contend that Rajasekar initiated insolvency proceedings in I.P.No.5 of 2011 before the Sub Court, Tirupur, seeking to declare him as an Insolvent, the prosecution under Section 138 of N.I.Act, is not maintainable.

5. It is admitted by Rajasekar that he owed a sum of Rs.18,59,000/- to Bhoopathi and in order to repay the said amount, he issued two cheques, which were dishonoured. The only ground raised by Rajasekar is that since he instituted insolvency proceedings by surrendering his assets, prosecution against him under Section 138 of N.I.Act, is not maintainable. It is not in dispute that as on date, the petitioner has not been declared as insolvent. However, in the considered view of this Court, the insolvency proceedings instituted by Rajasekar cannot in any way absolve him of his liability under Section 138 of N.I.Act nor will it act as immunity against the prosecution. In such view of the matter, this is not a fit case to quash the prosecution.

6. In the result, the Criminal Original Petition is dismissed. Consequently, connected MP is closed. The learned Magistrate is directed to conclude the trial in S.T.C. 3993 of 2011 as expeditiously as possible, preferably within six months from the date of receipt of a copy of this order. The learned Magistrate is further directed to release Rajasekar on bail on his appearance under Section 436 Cr.P.C. on his executing a bond for Rs.5000/- with one surety to the satisfaction of the Court, failing which, Rajasekar may not be entitled to suspension of sentence and bail in the event of his conviction in terms of Section 386 Cr.P.C.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

suk

To

The Judicial Magistrate NO.I
Tiruppur

+1 cc to M/s.Sarvabhauman Associates sr 54060

CrI.O.P.No.1497 of 2011

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