

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 29.06.2016

PRONOUNCED ON: 01.07.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

CrI.O.P. No. 15208 of 2014 & M.P. Nos.1 & 3 of 2014

Dr. K. Kandasamy

Petitioner

vs.

Mahalakshmi Metal and Scrap Processing Pvt. Ltd.

represented by its Executive Director

Mr. Pratap Kumar Rakesh

No.403/D.T.H. Road, Chennai 600 019

Respondents

Criminal Original Petition filed under Section 482, Cr.P.C. to call for the records of the entire proceedings pending on the file of the Hon'ble Judicial Magistrate No.1 at Kancheepuram in C.C. No.73 of 2012 against the petitioner/accused and quash the same.

For petitioner Mr. S. Xavier Felix

For respondent Mr. R. Gopinath
for M/s. Mc Gan Law Firm

ORDER

This Criminal Original Petition has been filed to call for the records of the entire proceedings pending on the file of the Hon'ble Judicial Magistrate No.1 at Kancheepuram in C.C. No.73 of 2012 against the petitioner/accused and quash the same.

2 For the sake of convenience, the petitioner and the respondent will be referred to as "accused" and "complainant" respectively.

3 Heard the learned counsel for the accused as well as the learned counsel for the complainant.

4 The petitioner is facing a prosecution for an offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the Act") in C.C. No.73/2012 before the Judicial Magistrate Court No.I, Kancheepuram, challenging which, he is before this Court on a very short ground.

5 It is the case of the complainant that the accused had issued a cheque dated 01.10.2011 for Rs.2.75 crores, which was presented on 01.10.2011 and was dishonoured on 03.10.2011. Following that, the complainant issued a statutory notice dated 12.10.2011 and has thereafter, filed a complaint on 25.11.2011.

6 It is the contention of the accused that the statutory notice issued by the complainant under Section 138 of the Act does not even contain the minimum particulars with regard to dishonour of the cheque and consequently, the prosecution launched on the edifice of a defective notice is illegal.

7 *Per contra*, the learned counsel for the complainant submitted that the prosecution was initially launched against five persons and four of them filed Crl.O.P. No.10097 of 2012 for quashing the prosecution, which was allowed by this Court on 24.08.2012 on the consent given by the complainant that the prosecution can be quashed against them, but, it should proceed further against the accused; on the strength of the consent given by the complainant, Crl.O.P.No.10097 of 2012 was allowed by this Court on 24.08.2012 and the prosecution against A2 to A5 was quashed. Hence, it is contended by the learned counsel for the complainant that the present petitioner (A1) cannot seek quashment of the prosecution as against him in the light of the order dated 24.08.2012 passed by this Court in Crl.O.P. No.10097 of 2012.

8 This Court gave its anxious consideration to the rival submissions.

9 As admitted by both the parties, the complainant launched the prosecution under Section 138 of the Act in C.C. No.73 of 2012 against five accused, in which, the present petitioner, viz., Dr. K. Kandasamy is the first accused and K. Anand Chakravarthy, Arun Chakravarthy, Vadivu and Aquilla Maria Anand are accused 2 to 5 respectively. A.2 to A.5 filed Criminal O.P. No.10097 of 2012 contending that they are not signatories to the cheque in question and they are the family members of Dr. K. Kandasamy and therefore, they cannot be

mulcted with criminal liability for the dishonour of the cheque issued by Dr. K. Kandasamy (A1).

10 When Crl.O.P. No.10097 of 2012 came up for hearing, it is true that the complainant made an endorsement, based on which, this Court quashed the prosecution as against A.2 to A.5. It may be necessary to reproduce the relevant portion of the order dated 24.08.2012 passed in Crl.O.P. No.10097 of 2012 as under:

"3. Heard and perused the records.

4. It is not in dispute that learned counsel for the respondent had made an endorsement in the bundle which reads as follows:

"Proceeding may be quashed against the petitioner and pray for direction to Hon'ble Judicial Magistrate, Kanchipuram to dispose of the case within 6 months."

5. In view of the aforesaid submissions and in view of the endorsement made by the counsel for the respondent, the proceedings initiated against the petitioners herein is hereby quashed and the Trial Court is directed to proceed with C.C. No.73 of 2012 and dispose of the same as expeditiously as possible, preferably within six months from the date of receipt of a copy of this order."

11 In the considered opinion of this Court, this cannot be put against Dr.K.Kandasamy because he was not the petitioner in Crl.O.P. No.10097 of 2012. In law, he has an independent right to challenge the prosecution launched against

him and that independent right cannot be taken away by the consent given by the complaint for quashment of the proceedings as against A.2 to A.5. Hence, this contention of the learned counsel for the complainant is rejected.

12 As regards the contention of the learned counsel for the accused that the statutory notice is defective, it may be necessary to extract the contents of the statutory notice verbatim, as under:

"1. My client states that the first of you is the Proprietor of M/s. Imagine Creations and you were engaged in the production of the film Nil Gavani Selladhey. My client states that you had borrowed an approximate sum of Rs.2,75,00,000/- from my client. All of you had also executed a deed of guarantee on 16.12.2010 guaranteeing the due repayment of the loan and agreed to pay the outstandings due to my client despite insufficient collection by exploiting negative rights of the film to various sources. My client states that the total outstandings in respect of the said loan is Rs.3,06,38,466/-. Therefore, the total outstanding as on 30.09.2011 is Rs.3,06,38,466/- and after deducting the sum of Rs.6,59,721/- received by my client due to exploitation of said film. Therefore, the total outstanding as on 30.09.2011 is Rs.3,06,38,466/- which you are jointly and severally liable to pay my client with further interest at the rate of 18% per annum. My client states that various demands were made by my client calling upon you to pay the outstandings which is due to my client and you had issued cheques favouring my client towards repayment of the outstandings and the said cheque was returned unpaid for the reason Insufficient Funds. My client reserves its rights to proceed against you all under the provisions of Negotiable Instruments Act for the criminal offence committed by you for dishonouring the cheque and also proceed separately for recovery of the amount under the civil law.

2 Therefore, I on behalf of my client call upon you to pay the sum of Rs.3,06,38,466/- together with interest at the rate of 18% per annum, within 15 days from the receipt of this notice failing which my client will be constrained to initiated appropriate legal proceedings against you all for recovery of the said sum holding you liable for all the costs arising therefrom."

13 The above notice does not disclose the minimum particulars about the cheque in question, viz., the amount for which it was issued, the date on which it was presented, the date on which it was dishonoured, etc. The notice, merely states as under:

" . . .you had issued cheques favouring my client towards repayment of the outstandings and the said cheque was returned unpaid for the reason Insufficient Funds "

14 In the considered opinion of this Court, this is too bald an averment for laying the foundation for a prosecution under Section 138 of the Act. The importance of a notice under Section 138 of the Act has been emphasised by the Supreme Court in **Sarav Investment and Financial Consultancy Private Ltd and another vs. Lloyds, Register of Shipping, Indian Office, Staff Provident Fund and another [2007 AIR (SCW) 6482]** and **Rahul Builders vs. Arihant Fertilisers and Chemicals and another, [2007 AIR (SCW) 7008]**.

15 Since the statutory notice dated 12.10.2011 issued by the complainant does not satisfy even the minimum requirements of law, the prosecution based on the same, stands vitiated and is accordingly quashed.

In the result, this Criminal Original Petition stands allowed. Connected M.Ps. are closed.

01.07.2016

cad

To

- 1 The Judicial Magistrate No.1
Kancheepuram
- 2 The Public Prosecutor
High Court of Madras
Chennai 600 104

P.N. PRAKASH, J.

cad

Crl.O.P. No.15208 of 2014

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