

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

Crl.O.P.No.5614 of 2013

and M.P.Nos.1 to 3 of 2013

Senthil Kumar ... Petitioner/Accused

Vs.

K.K.Sathishkumar ... Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for records in S.T.C.No.170 of 2011 on the file of the learned Judicial Magistrate, Bhavani and quash the same.

For Petitioner :Mr.R.Amizhdhu

For Respondent :Mr.A.K.Kumarasamy

O R D E R

The petitioner/accused has come forward with this petition for quashing the proceedings under Section 138 of the Negotiable Instrument Act, 1881, in S.T.C.No.170 of 2011 on the file of the learned Judicial Magistrate, Bhavani.

2.The learned counsel for the petitioner submitted that the impugned cheque has not been given for discharging the legally enforceable subsisting debt. He would submit that it was stolen by the respondent/complainant and the same has been utilized and misused by him along with some other persons and hence, he prayed for quashing of the proceedings in STC.No.170 of 2011. When petitioner's wife was on the family way he was away from his residence and at that time, the respondent along with other persons has looted his house and taken away the jewelleries, amount, documents, cheque books etc., and on his return, he has given the complaint. The learned counsel would further submit that since the complaint given by the petitioner was not registered, he approached this Court under Section 482 of the Criminal Procedure Code and on the direction of this Court in Crl.O.P.No.19032 of 2010, dated 23.08.2010, a case has been registered. Only after receiving the statutory notice, the petitioner came to know that the respondent has misused the cheque. Hence, prayed for quashing the proceeding in

S.T.C.No.170 of 2011.

3.The learned counsel for the respondent/complainant would submit that the cheque dated 17.07.2010, but after return of the cheque only, this complaint has been given and the case has been registered. So it is only after thought. So the cheque has been given for discharging legally subsisting liability. He further submitted that the issue involved in this case is only a question of fact and that can be decided only at the time of trial. Hence, he prayed for dismissal of the petition.

4.Considered the rival submissions made on both sides and perused the materials available on record.

5.The respondent as a complainant has filed the complaint under Section 138 of the Negotiable Instrument Act, 1881, stating that the petitioner has borrowed money and for discharging the same, he issued a cheque dated 17.07.2010 for a sum of Rs.18,50,000/- which was presented for encashment, that has been returned as "Account Closed". Hence, he issued a notice dated 22.10.2010 under Section 138 (b) of the Negotiable Instruments Act and after receipt of the same only, the said complaint has been preferred by the petitioner.

6.The ground raised for quashing the petition is that the cheque has not been given for discharging legally enforceable and subsisting liability. The account has been closed as early as on 18.06.2005, which is evident from page 40 of the typed-set of papers. Further it is stated by the petitioner that on 13.12.2009, in his absence, some people trespassed into his house and taken away all the documents, valuables etc. As the petitioner and his family members are facing threat for their life, he has given a complaint on 14.12.2009. Since the case has not been registered, he approached this Court in CrI.Op.19032 of 2010, this Court by order dated 23.08.2010, gave a direction that "the respondent is directed to complete the enquiry within a period of two weeks from the date of receipt of a copy of this order and act in accordance with law" and then only, the case has been registered.

7.It is pertinent to note that the learned counsel for the respondent drew the attention of this Court to page 10 of the petitioner's typed-set of papers, wherein, it was specifically mentioned that "these same people are presenting the cheques, time and again from various places. They are giving mental and physical stress, in all manners. Due to these people, me and my family have an life threatening situation", dated 17.09.2011, which is after filing of the respondent's complaint. Whether the cheque has been issued for discharging legally enforceable subsisting liability or stolen the cheque from the house of the petitioner, has to be decided only at the

time of trial and after letting oral and documentary evidence. It is only question of fact.

8.Considering the aforesated circumstances of the case, I do not find any reasons to quash the proceedings in S.T.C.No.170 of 2011 and therefore, the same deserves to be dismissed. Hence, the Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are also closed.

9.Since the matter is of the year 2011, the learned Judicial Magistrate, Bhavani, is directed to dispose of the same within a period of three months from the date of receipt of a copy of this order. The trial Court, uninfluenced by any of the observations made by this Court in this order, shall dispose of the matter on merits. The petitioner is entitled to raise all the pleas before the learned Magistrate during trial.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

dp

To

1.The Judicial Magistrate,
Bhavani.

2. -do-Thro The Chief Judicial Magistrate
Erode

+1 cc to Mr.A.K.Kumarasamy Advocate sr.8355

+1 cc to Mr.R.Amizhdu Advocate sr.8663

Cr1.O.P.No.5614 of 2013
and M.P.Nos.1 to 3 of 2013

gj (co)
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