

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

Cr1.O.P.No.2318 of 2016
and
Cr1.M.P.No.1216 of 2016

A.Rajendra Kumar

... Petitioner

Vs.

S.Jayasimman

.... Respondent

Prayer:-Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in C.C.No.317 of 2015 pending on the file of the Judicial Magistrate No.1, Chengalpet and quash the same.

For Petitioner : Mr.K.Natarajan

ORDER

The petitioner has come forward with this petition under Section 482 of Code of Criminal Procedure, seeking to quash the proceedings in C.C.No.317 of 2015 on the file of the learned Judicial Magistrate No.1, Chengalpet.

2.The respondent herein has preferred a private complaint stating that the petitioner has borrowed a sum of Rs.18 lakhs from the respondent and to discharge the same, he issued a cheque dated 05.06.2015 for Rs.20 lakhs. When it was presented for encashment, that has been returned as "insufficient funds" on 05.09.2015. After issuance of statutory notice, since the petitioner herein has not repaid the amount, he preferred a complaint against the petitioner under Sections 138 and 142 of Negotiable Instrument Act.

3.The learned counsel for the petitioner would submit that the petitioner herein has borrowed only Rs.9 lakhs, that has been evidence by page No.2 of the typed set of papers and the said amount has been repaid by the petitioner on 22.05.2015, which was evidenced by page No.3 of the typed set of papers. He further submitted that the cheque has been given only as a security. Hence, he prays that the complaint has to be quashed.

4.At the time of admission, argument of the learned counsel for the petitioner is heard in length.

5.The respondent herein has preferred a complaint under Sections 138 and 142 of Negotiable Instrument Act stating that the petitioner has borrowed Rs.18 lakhs and he has agreed to pay the amount with interest @ 24% p.a. Since he has not repaid the amount, the respondent made a request and at that time, the petitioner issued a cheque. When the cheque was presented for encashment, it was returned as "insufficient funds". After issuance of statutory notice, the present complaint has been preferred.

6.The point raised by the learned counsel for the petitioner is that the petitioner has borrowed only Rs.9 lakhs and the same has been repaid. The second limb of argument is that the cheque has been given only as a security. The defence raised by the petitioner is only a question of fact and not the question of law. What is the amount borrowed and whether the petitioner has discharged the same has to be decided only after letting oral and documentary evidence. Furthermore, the averments made in the plaint filed by the petitioner for injunction cannot be taken as gospel truth. Since the defence raised by the petitioner is only the question of fact, that can be decided only after letting oral and documentary evidence. Hence, I do not find any reason to quash the proceedings in C.C.No.317 of 2015. Therefore, the Criminal Original Petition deserves to be dismissed.

7.In the result, the Criminal Original Petition is dismissed. However, a direction is given to the learned Judicial Magistrate No.1, Chengalpet to dispose of the case in C.C.No.317 of 2015 within a period of six months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

cse

To

1.The Judicial Magistrate No.1,
Chengalpet.

2.The Public Prosecutor
High Court, Chennai.

+1cc to Mr.K.Natarajan, Advocate, S.R.No.6991

Cr1.O.P.No.2318 of 2016

MP (CO)
CA(12/02/2016)



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