

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2016

CORAM:

THE HONOURABLE MS.JUSTICE R.MALA

Crl.O.P.No.3388 of 2016

And

Crl.M.P.No.1744 of 2016

R.Devarajan

... Petitioner/3rd Accused

Vs.

K.M.Mohanasundaram

.... Respondent/Complainant

Prayer :

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to call for the records in C.C.No.260 of 2015, pending on the file of the Learned JM-I, Coimbatore and quash the Proceedings against the petitioner.

For Petitioner : Mr.M.Easan

ORDER

The petitioner who is the accused in C.C.No.260 of 2015, on the file of the learned Judicial Magistrate - I, Coimbatore has come forward with this petition for quashing of the complaint under Section 138 of the Negotiable Instruments Act stating that the complaint itself is not maintainable because the complaint has been filed under Sections 138, 141 of the Negotiable Instruments Act and under Section 420 of IPC.

2.The learned counsel appearing for the petitioner would submit that cheque has been given as security for the amount borrowed and summary trial has commenced and C.C.No. has been given. He would further submit that the cheque has been issued only as a security for the amount borrowed. So the ingredients of offence under Section 138 of the Negotiable Instruments Act has not been made out. Hence, he prayed for quashing of the same.

3.At the time when the matter is taken up for consideration, heard the arguments of the learned counsel appearing for the petitioner in length.

4.At the time of filing of private complaint, the complaint has been filed under Sections 138, 141 of the Negotiable

Instruments Act and under Section 420 of IPC. After recording sworn statement, the learned Judge has taken cognizance only for the offences punishable under Section 138 of the Negotiable Instruments Act. In such circumstances, the arguments advanced by the learned counsel appearing for the petitioner that the complaint given in C.C.No. itself is incorrect is not acceptable.

5.The argument of the learned counsel appearing for the petitioner that the Trial Court has committed a mistake by taking cognizance of the offence punishable under Section 138 of the Negotiable Instruments Act does not merit acceptance, because after recording sworn statement only the Trial Court has taken cognizance of the offence punishable under Section 138 of the Negotiable Instruments Act. So the first limb of argument is discarded.

6.The second limb of argument is that the cheque has been given as security for the amount borrowed. The complainant preferred complaint stating that the petitioner herein borrowed a sum of Rs.30,00,000/- from the complainant on three occasions namely, on 13.08.2014 - a sum of Rs.1,00,000/-, on 22.08.2014 - a sum of Rs.4,00,000/- and on 27.08.2014 - a sum of Rs.25,00,000/- and he undertook to repay the sum within a short duration of 2 to 3 months and to discharge the same, he issued post-dated cheque. Since he has not repaid that amount, he presented the cheque for encashment and it was returned with endorsement 'payment stopped by drawer'. Hence, after issuance of legal notice, the complaint has been preferred.

7.The learned counsel appearing for the petitioner would submit that at the time of borrowal, he has stated that he has borrowed only a sum of Rs.9,50,000/-, the cheque has been given as security. He has taken me to page no.17 in the typed set, a letter from the respondent dated 18.10.2014, wherein it is stated "Your DSK Bricks loan Due date is nearing. When will you pay the principal Rs.30,00,000/- and interest. This letter is just for reminder. Re-pay as soon as possible." The reply has been sent on 23.10.2014 wherein it has been stated as "I further like to inform you that at present I am not in a position to return the borrowed Principal amount immediately that too within Three months from the borrowing further you are threatening to present the cheques for collection which I had issued you towards the security purpose of the above said principal amount. As the above facts being so, I threw this reply request you not to misuse the security papers as issued to you in support of the above principal amount towards which I and My Partner are regularly paying the interest in your son's Corporation Bank A/C per your instruction. Further I also request you not to present the cheques which had been issued to you for security purpose." In the legal notice dated 13.12.2014 in page no.34 of the typed

set, it is stated that "That in consideration and as security for the repayment of the above said loan, you had issued a post dated cheque dated 26.11.2014".

8. In such circumstances, it is admitted that the cheque has been given by this petitioner. Once, the issuance of cheque is admitted, there is presumption under Sections 118 and 139 of the Negotiable Instruments Act. The cheque has been issued for legally enforceable debt. Even though the presumption is rebuttable in nature, the petitioner alone has rebutted the position by way of letting in evidence and cross examination of P.Ws. by propoundance of probabilities.

9. It is a question of fact and it cannot be decided in a quash petition and it can be decided only at the time of trial after letting in oral and documentary evidence. So I am of the view that this ground also fails. Since the complaint has been taken cognizance of for the offence punishable under Section 138 of the Negotiable Instruments Act, this Criminal Original Petition is dismissed with direction to the learned Judicial Magistrate - I, Coimbatore to dispose of the C.C.No.260 of 2015 as early as possible. Consequently, the connected miscellaneous petition is also closed.
pri

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1. The learned Judicial Magistrate - I,
Coimbatore

2. The Public Prosecutor
High Court, Madras.

+ 1 cc to Mr.M.Easam, Advocate SR 9684

kji(co)
prk26/2

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