



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.04.2016

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.OP(MD) No.6839 of 2016

Kandasamy

..Petitioner

Vs

V.Senthilkumar

.. Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in complaint in STC No.398 of 2016 on the file of the Judicial Magistrate Court, NO.1, Karur and quash the same.

For Petitioner : Mr.A.Shajahan

O R D E R

This petition has been filed to quash the case in STC No.398 of 2016 on the file of the Judicial Magistrate Court, NO.1, Karur.

2. For the sake of convenience, the parties will be referred to as the accused and the complainant. It is the case of the complainant that the accused borrowed a sum of Rs.9 lakhs on 12.12.2014 and in discharge of the said liability, the accused has given a cheque bearing No.909784 dated 02.07.2015 for a sum of Rs.9 lakhs, which, when presented by the complainant was returned unpaid. The complainant issued a statutory notice on 08.07.2015 and the accused gave a reply notice dated 21.07.2015 refuting the allegations in the statutory notice. Since the accused did not make the payment, within the period fixed under Section 138 of the Negotiable Instruments Act, the complainant has lodged the present prosecution in STC No.398 of 2016 before the Judicial Magistrate NO.I, Karur against the accused. Challenging which, the accused has preferred this petition.

3. The learned counsel for the accused submitted that the transaction between the accused and the complainant was a business transaction and that accused is the partner in Dharshana Textiles and the cheque has been issued by the partnership firm. The learned counsel for the accused submitted that since the



partnership firm has not been included as an accused, the transaction under Section 138 of the NI Act cannot be entertained.

4. This Court called for the copy of the impugned cheque from the Judicial Magistrate No.I, Karur and a copy has been received therefrom, which shows that the accused has given a individual cheque and not the cheque of Dharshana Textiles. The learned counsel for the accused further submitted that in paragraph No.1 of the complaint, the complainant has stated that the accused has borrowed a sum of Rs.2 lakhs, but whereas the cheque is for Rs.9 lakhs, which itself shows falsity in the case of the complainant. On a complete reading of the complaint, it is seen that in the cause of action paragraph, the complainant has clearly stated that the accused had borrowed Rs.9 lakhs on 12.12.2014 and had executed a promissory note in favour of the complainant and in discharge of the said liability, the accused had given the impugned cheque on 02.07.2015. In the list of documents filed with the complaint, the complainant has enclosed the copy of the promissory note dated 12.12.2014 for Rs.9 lakhs. Therefore, the contention of the learned counsel for the petitioner/accused by relying upon one of the content that only Rs.2 lakhs has been received cannot be countenanced.

5. The learned counsel for the accused further submitted that the said cheque was not given to the complainant, but was given to one Sureshkumar and in support of this contention, he relied upon the reply notice dated 21.07.2015. For quashing a prosecution under Section 138 of the NI Act, the Hon'ble Supreme Court in Krishnamoorthy vs. Chellammal reported 2015(4) Scale 371 has held that the disputed question of facts shall not be gone into. Under such circumstances, this petition is devoid of merits and the same is dismissed with liberty to the petitioner to raise all the points before the trial Court. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate Court, NO.1, Karur

2. The Additional Public Prosecutor

Madurai Bench of Madras High Court, Madurai.

+1cc to M/s.A.Shajahan, Advocate, Sr.No.24018

RR

<https://hcma.cslcourts.gov.in/hcse/2P-4C>

Cr1.OP(MD) No.6839 of 2016

26.04.2016