

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2017

CORAM

THE HONOURABLE Mr.JUSTICE N.AUTHINATHAN

CRL.OP.No.20068 of 2010

and

MP.No.1 of 2010

R.Beema Sankar Rao Petitioner

Vs

Ajay Kumar Surana Respondent

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C., praying to call for the records and quash the proceedings as against the petitioner in C.C.No.364 of 2010 pending on the file of d VIII Metropolitan Magistrate, George Town, Chennai.

For Petitioner : Mr.S.Sairaman

For Respondent : Notice served. No appearance

O R D E R

This Criminal Original Petition has been filed by the petitioner to quash the proceedings in C.C.No.364 of 2010 on the file of the learned VIII Metropolitan Magistrate, George Town, Chennai.

2. The petitioner is the accused in C.C.No.364 of 2010. pending on the file of the learned VIII Metropolitan Magistrate, George Town, Chennai. The complaint has been filed by the respondent against the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act. The learned Magistrate has taken cognizance of the complaint and issued summons to the petitioner.

3. In the complaint the respondent averred that the petitioner borrowed Rs.35,000/- from him. The petitioner has not repaid the amount with interest. For the discharge of the said liability, the petitioner has issued a cheque for Rs.42,000/- bearing Cheque No.451921 drawn on Bank of Baroda,

Egmore, Chennai, dated 13.11.2009 in favour of respondent/complainant for collection. It was dishonoured, for the reason "Opening Balance Insufficient" in the account of the petitioner. The respondent/complainant has issued a legal notice on 21.11.2009 to the petitioner. Thereafter, the respondent/complainant has preferred this complaint.

4. It is alleged by the petitioner that he obtained a hand loan of Rs.35,000/- from one Madhu. He agreed to pay 3% interest. The said Madhu paid Rs.24,500/- after deducting interest in one lumpsum. The petitioner repaid Rs.3,500/- per month for a period of 10 months. The entire loan amount was repaid in the year 2005. At the time of obtaining loan, the petitioner gave 10 blank cheques for security purpose. According to him the respondent misusing one of the cheques given to said Madhu, for security purpose filed the present case. In view of the above the learned counsel for the petitioner would contend that the proceedings are before the Court below are liable to be quashed.

5. The learned counsel appearing for the respondent disputed the above factual aspects. According to him the factual defences taken by the petitioner cannot be taken as a ground for quashing the proceedings.

6. It is brought to the notice of this Court that already trial has commenced in this case and three witnesses have been examined. The disputed question of facts can only be decided by the trial Court after trial. This Court cannot act as a trial Court while exercising powers under Section 482 Cr.P.C. It is open to the petitioner to raise the above factual defences before the trial Court. As the trial has commenced, this Court is not inclined to grant any relief to the petitioner.

N.AUTHINATHAN, J.

jv

7. In the result, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1 The VIII Metropolitan Magistrate,
George Town, Chennai

2 The Public Prosecutor,
High Court, Madras.

+lcc to Mr.S. Sairaman, Advocate, S.R.No.7171

ks(CO)
md(24/02/2017)

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