

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2017

CORAM :

THE HONOURABLE MR.JUSTICE M.SUNDAR

Crl.O.P.Nos.21689 of 2011

and M.P.No.1 of 2011

Mr.Farook,
Proprietor,
Kay Ge Corporation,
S.F.No.428/1, Eran Thottam,
Sathy Road,
Ganapathy,
Coimbatore - 641 006.

... Petitioner/Accused

Vs.

Mr.T.Senthilkumar,
S/o.Thangavel,
Proprietor, M/s.Metallurgical Engineering Industries,
C-3, Private Industrial Estate,
Coimbatore 641 021.

.. Respondent/Complainant

Prayer : Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the entire records pertaining to the private complaint in S.T.C.No.77 of 2011 on the file of the Judicial Magistrate No.VII, Coimbatore and quash the same.

For Petitioner : Mr.L.Mouli

For Respondent : Mr.M.Govindaraju

O R D E R

This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code. The lone accused in the trial Court is the petitioner before this Court.

2. This petition has been filed before this Court with a prayer to quash the criminal complaint being S.T.C.No.77 of 2011, on the file of the learned Judicial Magistrate-VII, Coimbatore.

3. There is no dispute that the petitioner issued a cheque bearing No.006499, drawn on Union Bank of India, R.S.Puram, Coimbatore, for a sum of Rs.36,750/- to the respondent.

4. It is the case of the petitioner that some work, which is known as 'hardening' was entrusted to the respondent and that the cheque was issued towards hardening work done by the respondent. It is the further case of the petitioner that the work was thoroughly unsatisfactory, which in turn has allegedly caused huge loss to the petitioner. Immediately on realizing that the work is unsatisfactory, the petitioner would contend that he issued a notice dated 20.11.2010 intimating the respondent that stop payment instruction has been given to the bank. It is the case of the petitioner that notwithstanding the communication, the respondent herein went ahead and presented the cheque. The cheque not being honoured owing to stop payment instructions, the respondent has laid the above said complaint before the Magistrate Court *inter alia* under Section 138 of the Negotiable Instruments Act.

5. The Learned Counsel for the petitioner would place before me a judgment reported in 1998 STPL (DC) 437 SC [K.K.Sidharthan Vs. T.P.Praveena Chandran], draw my attention to paragraph No.4 therein and would submit that the mischief of Section 138 would not be attracted when the factum of stop payment instructions to the bank is informed to the payee by the payer.

6. Per contra, the Learned Counsel for the respondent would place before me a judgment reported in (2002) 1 Supreme Court Cases 234 [M.M.T.C. Ltd, and another Vs. Medchl Chemicals and Pharma (P) Ltd.] and draw my attention to paragraph No.19, which reads as follows:

"19. Just such a contention has been negatived by this Court in the case of Modi Cements Ltd. v. Kuchil Kumar Nandi. It has been held that even though the cheque is dishonoured by reason of "stop payment" instruction an offence under Section 138 could still be made out. It is held that the presumption under Section 139 is attracted in such a case also. The authority shows that even when the cheque is dishonoured by reason of stop-payment instructions by virtue of Section 139 the court has to presume that the cheque was received by the holder for the

discharge, in whole or in part, of any debt or liability. Of course this is a rebuttable presumption. The accused can thus show that the "stop-payment" instructions were not issued because of insufficiency or paucity of funds. If the accused shows that in his account there were sufficient funds to clear the amount of the cheque at the time of presentation of the cheque for encashment at the drawer bank and that the stop-payment notice had been issued because of other valid causes including that there was no existing debt or liability at the time of presentation of cheque for encashment, then offence under Section 138 would not be made out. The important thing is that the burden of so proving would be on the accused. Thus a court can not quash a complaint on this ground."

7. In the instant case though the petitioner states that he has suffered huge losses owing to the unsatisfactory work of the respondent, no suit for damages has been filed. This position is admitted. It is also seen that any claim for damages in this regard now would be time barred. Therefore there is no dispute before this Court that the petitioner has not proceeded against the respondent for damages. The respondent would also draw my attention to his legal notice dated 20.12.2010 stating that he is ready to undergo a second test to evaluate the quality of the work done by him.

8. There is a reply dated 23.12.2010 from the petitioner stating that the respondent should have informed him earlier, if he wanted to go for a second test.

9. Owing to my view qua damages suit, set out supra in para 7, K.K.Sidharthan's case cited by petitioner is inapplicable to the factual matrix of this case. I follow the principle laid down by the Honourable Supreme Court of India in MMTC Limited case (stated supra) as in the instant case, on the face of it, I do not find any valid reason much less a tenable ground for issue of stop payment instructions by the petitioner owing to the fact that the petitioner has not filed any suit for damages against the respondent. Therefore it follows as a sequitur that it is for the petitioner to establish all these before the trial court. 'All these', include the fact that he had sufficient balance in his account on the given date that the stop payment instructions were given for valid and tenable reasons. It is not in dispute that these are matters for trial.

10. Therefore the present petition for quashing the criminal complaint under Section 482 of Criminal Procedure Code can not be answered in the affirmative.

11. The criminal original petition is dismissed. Though obvious, it is made clear that the trial court shall proceed with the trial uninfluenced by and untrammelled by the observations made by this Court in the instant order, which is for the limited purpose of deciding whether the criminal complaint should be quashed without trial or not.

12. The criminal complaint is of the year 2011. Therefore, the learned Judicial Magistrate VII, Coimbatore is directed to proceed with the complaint on a day to day basis and dispose of the same as expeditiously as possible, in any event, within six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

vsm

To

The Judicial Magistrate VII,
Coimbatore.

+1 CC to Mr.L.Mouli, Advocate Sr.No.15805

VG(CO)
KP(23/03/2017)

Cr1.O.P.No. 21689 of 2011

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