

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2017

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

CrI.O.P.No.20485 of 2010

and

M.P.No.1 of 2010

- 1.M/s.Koluthara Estates Pvt. Ltd.,
Regd. Office-XXXVII, 3062, Basin Road,
Ernakulam - 682 031.
Kerala State.
- 2.Dr.George V.Koluthara
Managing Director,
Almeca Medical Centre,
NH-47, Bye Pass Road,
Palarivattam,
Cochin - 682 028. ... Petitioners

vs.

M/s.Sree Gokulam Chit & Finance Co. (P) Ltd.,
Represented by K.Satheesh Kumar,
No.66, Aarcot Road, Kodambakkam,
Chennai - 600 022. ... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to quash the Criminal Complaint in C.C.No.4776 of 2005 pending on the file of the VIII Metropolitan Magistrate, George Town, Chennai.

For Petitioners: Mr.Neethikumar

for M/s.Waraon and Sai Rams

For Respondent : Mr.L.Rajasekar

JUDGMENT

This criminal original petition under section 482 of Cr.P.C. is filed by the petitioners to quash C.C.No.4776 of 2005 on the file of the learned VIIth Metropolitan Magistrate, George Town, Chennai.

2.The sum and substance of this original petition is as follows:

The C.C. stated supra is taken cognizance by the learned VIIth Metropolitan Magistrate, Chennai over the respondent Finance Company's complaint dated 02.09.2004 alleging for an offence committed by the revision petitioner under Section 138 of the Negotiable Instruments Act. The said complaint under section 200 of Cr.P.C was lodged by the respondent claiming a cheque issued by the petitioner in respect of auctioned default chit went dishonored.

3.It is found that the respondent/complainant namely Shri.Gokulam Chit and Finance Com. (P) Ltd., is a finance company engaged in chit activities. The Petitioner herein namely Dr.George V.Koluthara acting as the Managing Director of the 1st accused/1st petitioner Private company namely M.S.Koluthara estates private Limited had raised/availed a chit bearing face value Rs.3,12,341/- from the respondent chit company. The corresponding chit number is GH 34/11 and the chit was auctioned by the petitioner.

4.However after auctioning the chit, the petitioner defaulted to pay his due and when the due amount was demanded by the complainant towards the above auctioned chit, the petitioner issued a cheque dated 21.05.2004 bearing No.622540 for a sum of Rs.3,12,341/- towards his liability.

5.According to the complainant the cheque was issued towards the existed liability of the petitioner and when the same was presented on 28.05.2004 for encashment it came to be returned for want of sufficient funds. Thereupon issuing the statutory notice and complying with other formalities, the above complaint came to be filed and the same was taken on file in C.C.No.4776 of 2005 by the Learned the VIIth Metropolitan Magistrate, George Town, Chennai.

6.The petitioner by way of this instant petition seeks to quash the above complaint on three prime grounds namely:

1) That the petitioner was not in any due or liability to pay towards the above chit. It is his case that the amount payable by him towards the above chit was already paid.

2) The respondent/ complainant company mis-utilizing the cheque which was given for security purpose during rising of the chit was fraudulently presented for encashment.

3) That the above cheque was manipulated and fabricated and as the same was in their custody it was utilized for filing of the above complaint.

7.I heard Mr.Neethikumar for M/s.Waraon and Sai Rams, learned counsel for the petitioners and Mr.L.Rajasekar, learned counsel for the respondent and on careful perusal of the record.

8.I am unable to appreciate the above grounds based for quashing of the instant complaint for the following reasons that
i) Only on appraisal of the oral/documentary evidence an opinion can be formed as to discharge of liability as claimed by the petitioner.

ii) It is admitted case of either side that there was money transaction between complainant and respondents. It is not the case of the petitioner that the cheque was not issued to the complainant, whereas it is his case that the cheque issued for security purpose was misused by the respondent.

9.It is needless to say that if the amount due was already paid by the petitioner it is always open to the petitioners to establish the same before the learned Magistrate.

10.Coming to other facet of ground of attack being that the cheque is manipulated, the said allegation also has to be established through oral/documentary evidence.

11.For the reasons stated supra, this Court is not inclined to quash the subject complaint in C.C.No.4776 of 2005 in line with the settled law that the extra ordinary power under section 482 Cr.P.C. has to be exercised cautiously and sparingly in appropriate cases.

12.As stated above this case is not a fit case to exercise power under 482 of Cr.P.C. Accordingly the criminal original petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

vs

To
The VIIth Metropolitan Magistrate,
George Town, Chennai.

+ 1 cc to MR. L. Raja Sekar, Advocate Sr.20129

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M.P.No.1 of 2010

(CS-DR)
EU(30/10/2018)