

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 10.09.2018

CORAM:

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

Cr1.O.P.No.30060 of 2012
and
M.P.Nos.1 and 2 of 2012

M.S.Sampathkumar	...	Petitioner
	Vs.	
K.Balu	...	Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to quash the complaint in C.C.No.5202 of 2011 on the file of XVII Metropolitan Magistrate at Saidapet under Section 200 of Cr.P.C. for the offence punishable under Section 138 of Negotiable Instrument Act, 1881 as amended by Act 66 of 1988.

For Petitioner : Mr.S.Saravanan
For Respondent : Mr.D.Jaganathan

ORDER

This criminal original petition is preferred by the petitioner/accused to quash the complaint made by the respondent in C.C.No.5202 of 2011 pending on the file of the Learned XVII Metropolitan Magistrate at Saidapet, Chennai.

2.Brief case of the petitioner/accused:

The facts of the case is that the petitioner/accused had borrowed a sum of Rs.10,00,000/- from the respondent/complainant as hand loan and executed a pro-note on 17.11.2010. Then the petitioner/accused issued a cheque bearing No.592296 drawn on the Karur Vysya Bank, Somanur on 21.5.2011 to the respondent/complainant. The respondent/complainant deposited the cheque through his bankers Indian Overseas Bank T.Nagar Branch, Chennai and the same was returned stating No funds available as per the bank memo dated 23.5.2011. The respondent/complainant sent a statutory legal notice to the petitioner/accused on 21.6.2011. The notice was refused by the petitioner/accused on 25.6.2011 and failed to repay the amount. Hence this respondent/complainant filed the complaint under section 200 Cr.P.C before the trial Court for the offences punishable under section 138 of the Negotiable Instruments Act. Aggrieved over the same, the petitioner/accused filed this quash petition.

3.The learned counsel for the petitioner submits that the respondent had a malafide intention to create false case in C.C.No.5202 of 2011. The petitioner and the respondent is not known to each other or through any friends of both, and how and where the transaction took place and the reason for lending such a huge amount to the petitioner is not properly stated and had simply stated the accused had borrowed a sum of Rs.10,00,000/- from the complainant as hand loan.

4.The learned counsel for the petitioner submits that the complaint is totally against the principles of criminal jurisprudence and the same is against the several dictums of this Court and the Hon'ble Apex Court.

5.The learned counsel for the petitioner submits that the respondent had abused the due process of law by not stating the details of the transaction, the place and the necessity to the respondent to borrow such a huge amount, therefore the complaint is a malafide intention to make illegal gains by harassing the petitioner.

6.The learned counsel appearing for the respondent opposed the contentions of the petitioner/accused and sought for dismissal of the quash petition.

7.I heard Mr.S.Saravanan, learned counsel for the petitioner and Mr.D.Jaganathan, learned counsel for the respondent and perused the entire materials available on record.

8.In the case on hand, the petitioner/accused raised the disputed questions of fact which has to be decided by the learned trial Court. Further the contentions raised by the petitioner/accused cannot be entertained in the quash petition filed under section 482 of Cr.P.C.

9.In the result:

a) The criminal original petition is dismissed;

b) The trial Court namely, the learned XVIIth Metropolitan Magistrate, Saidapet, Chennai is directed to dispose the complaint in C.C.No.5202 of 2011 within a period of four months from the date of receipt of a copy of this order;

c) The appearance of the petitioner/accused is dispensed with except the appearance directed by the learned Magistrate. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

vs

To

1.The XVIIth Metropolitan Magistrate,
Saidapet, Chennai.

2.do Thro Chief Metropolitan Magistrate,
Chennai.

+1cc to Mr.S.Saravanan, Advocate, S.R.No. 62539

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GN(18/03/2019)