

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2019

CORAM:

THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

Cr1.O.P.No.3431 of 2011
and
M.P.Nos.1 & 2 of 2011

[Orders Reserved on 23.08.2018]

K.Velu ... Petitioner/Accused

Vs.

P.Damodharan ... Respondent/Complainant

PRAYER:

Petition is filed under Section 482 of Criminal Procedure Code, praying to call for the records of STC Nos.152 of 2009 respectively pending on the file of Judicial Magistrate No.III, Coimbatore and quash the same.

For Petitioners : Mr.M.Prabhakaran

For Respondent : Mr.Ramesh Kumar Chopra

ORDER

This Criminal Original Petition has been filed praying to quash the proceedings in STC No.152 of 2009 pending on the file of learned Judicial Magistrate No.III, Coimbatore.

2. The brief facts leading to the filing of the present Criminal Original Petition are as follows:

The petitioner and the complainant are known to each other. On 02.09.2008, the petitioner / accused approached the complainant and received a sum of Rs.6,00,000/-, as hand loan, and agreed to repay the said amount within a period of six months, with 18% interest per annum, for which the petitioner has given a cheque. The Petitioner / accused neither repaid the amount nor paid interest, as promised. Therefore, the complainant presented the cheque to his bankers viz., Bank of Baroda, Tatabad Branch, Coimbatore, on 14.02.2009 and it was returned with an endorsement "Funds Insufficient". Hence, the case.

3. The learned counsel appearing for the petitioner would submit that the subject cheque was issued for collateral security for the loan secured by 'M/s.Sri Venkateswara Educational and Charitable Trust'. But, the trial Court miserably failed to take note of the factum that the complaint preferred against the petitioner herein in his individual capacity, without impleading the Trust, is non est, and not maintainable in law. Further, the trial Court prior to taking cognizance of offence under Sections 138 & 142 of Negotiable Instruments Act, not acted in consonance with the provision, as contemplated under law.

4. The learned counsel appearing for the respondent would submit that on 02.09.2008, the petitioner received a sum of Rs.6,00,000/-, as hand loan, from the complainant and agreed to repay the same with 18% interest per annum, for which the petitioner has given a cheque. The Petitioner neither repaid the principal amount nor paid interest, as promised. Therefore, the complainant presented the cheque to his bankers viz., Bank of Baroda, Tatabad Branch, Coimbatore, on 14.02.2009 and it was returned with an endorsement "Funds Insufficient". Therefore, the accused had purposely cheated the complainant.

5. I have heard the learned counsels appearing on either side and perused the materials available on record.

6. The contention of the petitioner that since the cheque in question was issued for collateral security, for the loan secured by the Trust viz., 'M/s.Sri Venkateswara Educational and Charitable Trust', and non impleading the Trust, as an accused is non est in law, is not acceptable, for the reason that the cheque in question had been issued in the name of the petitioner, for the loan availed. Further, in respect of the Notice issued by the complainant, the petitioner had not paid money nor replied the same. The claim of security cheque on the facts of the above case is unacceptable, which is a matter of fact, which has to be decided only in the trial.

7. In view of the forgoing discussions, this Criminal Original Petition stands dismissed. Since the case is pending trial from the year 2009, nearly a decade, the trial Court is directed to give top priority and hear the matter on day-to-day basis and to complete the trial within a period of six months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

MPK

To

1. The Judicial Magistrate No.III,
Coimbatore
2. -do Thro' Chief Judicial Magistrate,
Coimbatore.

Cr1.O.P.No.3431 of 2011

NMI (CO)
CS/15/02/2019