IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2017

(Orders reserved on 18.07.2017)

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

<u>Crl.O.P.No.22120 of 2010</u>
<u>and</u>
<u>M.P.No.1 of 2010</u>

T.Vijaya Babu ... Petitioner/Accused

.. Vs ..

S.D.Yoganath ... Respondent/Complainant

<u>PRAYER:</u> Criminal Original Petition filed under Section 482 of Cr.P.C., to quash the proceedings in C.C.No.45 of 2010 pending on the file of the learned Judicial Magistrate, Arakkonam.

For Petitioner : Mr.J.Shanmuga Sundara Babu

For Respondent : Mr.R.Karthikeyan

- - - - -

ORDER

This criminal original petition is filed by the petitioner under Section 482 of Cr.P.C., to quash the proceedings in C.C.No.45 of 2010 pending on the file of the learned Judicial Magistrate, Arakkonam.

2. The brief facts, which are necessary for determination of the case, are as follows:-

The respondent herein has presented a complaint under Section 200 of Cr.P.C. before the learned Judicial Magistrate, Arakkonam, alleging that he is an income tax assessee and the petitioner/accused approached him to borrow a sum of Rs.7,00,000/- from him on 10.04.2009 for constituting his dental clinic and for buying the instruments regarding the clinic at the complainant's residence and for the said amount, the accused has given a post dated cheque bearing No.262823 dated 15.07.2009 for Rs.7,00,000/- drawn at State Bank of India, Anna Nagar West Branch, Chennai, and subsequently, when the said cheque was presented by the complainant for collection, it was bounced as 'account closed' and hence, he gave a complaint to the

Inspector of Police, Arakkonam Town Police Station in C.S.R.No.351 of 2009. Since the police has not taken any action, he has preferred the private complaint alleging that the accused had issued the cheque knowing well that the account was closed and there was dishonest intention on the part of the accused and hence, he has committed the offence under Section 420 of IPC and also committed criminal breach of trust and hence, he has committed the offence punishable under Section 406 of IPC and the said complaint was taken cognizance by the learned Judicial Magistrate, Arakkonam, as C.C.No.45 of 2010.

3. Challenging the taking cognizance by the learned Judicial Magistrate, Arakkonam, the petitioner herein/accused had preferred this petition seeking to quash the proceedings in C.C.No.45 of 2010 on multiple grounds inter alia contended that initially, the brother of the complainant namely D.Ranjith had preferred a complaint in C.C.No.49 of 2010 under Sections 138 and 142 of the Negotiable Instruments Act before the learned Judicial Magistrate, Arakkonam, alleging that the petitioner herein/accused has borrowed a sum of Rs.5,00,000/- from the complainant/Ranjith on 12.06.2009 for his family necessity and to develop his Chennai Dental Clinic and also to improve his father's

textile business namely, Vsantha Maaligai Textiles, Arakkonam, and accordingly, to discharge the said amount, the accused had issued a post dated cheque bearing No.262824, dated 12.12.2009 for Rs.5,00,000/- drawn at State Bank of India, Anna Nagar (West) Branch, Chennai, and when the said cheque was presented for collection, it was bounced as 'account closed' and hence, after issuance of mandatory notice, the complainant namely D.Ranjith had preferred the above said complaint in C.C.No.49 of 2010. After trial, the learned Judicial Magistrate, Arakkonam, by an order dated 17.03.2011, has convicted the petitioner/accused for the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo rigorous imprisonment for one year and to pay a sum of Rs.5,00,000/- as compensation and in default to undergo simple imprisonment for further period of three months. As against the said conviction and sentence, the accused had preferred an appeal in Crl.A.No.90 of 2011. The learned II Additional District and Sessions Judge, Vellore at Ranipet, has allowed the said appeal on 29.11.2013 and set aside the judgment passed by the learned Judicial Magistrate, Arakkonam, in C.C.No.49 of 2010, dated 17.03.2011.

4. In respect of the cheque in issue in the present case, the learned counsel for the petitioner/accused has stated that no offence is made out neither under Section 406 of IPC nor under Section 420 of IPC and relied upon the decisions of this Court reported in ***2015 (3) MWN (Criminal) 190 [A.Inbaraj and others Vs. Dinakaran]*** and ***(2014) 4 MLJ (Criminal) 472 [Tambraparni Containers P. Ltd., rep. by its Manager-in-charge V. A.P.Varghese]***.

5. Last but not the least, the learned counsel for the petitioner has also filed in the typed set of papers a letter dated 16.12.2004 written by one Mr.M.Ravi and also contended that the accused herein namely T.Vijaya Babu has originally borrowed a sum of Rs.50,000/- from the said Ravi and for the said amount, the accused had issued two unfilled cheques bearing Nos.262823 and 262824 and he had repaid the said amount. However, the said Ravi has not returned the cheques and he has given acknowledgment for payment of Rs.50,000/- along with an undertaking that he will return the cheques having the above said Serial numbers, after he traced out from his house, since the said cheques were misplaced by him and the said acknowledgment

of discharge of debt along with an undertaking as stated above is dated 16.12.2004 and it was attested by two witnesses.

6. Learned counsel for the respondent/complainant stated that as against the judgment dated 29.11.2013 in Crl.A.No.90 of 2011, he has filed a criminal revision case and the same is pending before this Court. In the subject matter of the case in C.C.No.45 of 2010, the trial Court has taken cognizance of the private complaint for the offences punishable under Sections 406 and 420 of IPC. The question as to whether the alleged act of the petitioner amounts to an offence under Section 420 of IPC, it is to be seen that for cheating, there should be an allegation that act of the accused amounts to deception and person deceived to deliver any property to any person by fraudulent or dishonest manner and for the offence punishable under Section 406 of IPC, the complainant has to satisfy the requirements of Section 415 of IPC.

7. It remains to be stated that the amount has been borrowed from the complainant and according to him, the cheque given by the accused alleged to have been dishonoured and in respect of cheque

with next serial number, on an earlier occasion, the brother of the complainant has preferred a complaint in C.C.No.49 of 2010 alleging the very same features and which is now said to be pending in the criminal revision stage.

8. Considering the fact that the averment in the complaint does not satisfy the basic ingredients of the alleged offences under Sections 406 and 420 of IPC and following the decisions of this Court reported in ***2015 (3) MWN (Criminal) 190 [A.Inbaraj and others Vs. Dinakaran]*** and ***(2014) 4 MLJ (Criminal) 472 [Tambraparni Containers P. Ltd., rep. by its Manager-in-charge V. A.P.Varghese]***, I have no hesitation to come to a conclusion that the complainant wanted to convert the civil dispute into a criminal dispute and it is an abuse of process of the Court and it is a fit case for exercising the powers of the Court under Section 482 of Cr.P.C. It is needless to say that when the allegations are manifestly abuse of process of the Court, the same needs be quashed by exercising the powers under Section 482 of IPC. Accordingly, the proceedings in C.C.No.45 of 2010 pending on the file of the learned Judicial Magistrate, Arakkonam, is liable to be quashed.

RMT.TEEKAA RAMAN, J.

Jrl

9. In the result, this criminal original petition is allowed and the proceedings in C.C.No.45 of 2010 pending on the file of the learned Judicial Magistrate, Arakkonam, is quashed. Consequently, the connected miscellaneous petition is closed.

07.08.2017

Index : Yes / No
Internet : Yes
Jrl

To

The Judicial Magistrate,

Arakkonam.

Order in

Crl.O.P.No.22120 of 2010