

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Cr1.O.P.No.22353 of 2010
and M.P.No.1 of 2010

D.Rajan

... Petitioner/Accused

S.Vasanthakumar

-vs-

... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., praying to call for the records and quash the case in STC No.944 of 2009 pending on the file of the Judicial Magistrate No.II, Salem and pass such further or other orders as it may deem fit.

For Petitioner : Mr.K.Raja
For Respondent : Mr.C.Prabakaran

O R D E R

This petition has been filed, seeking to quash the case in S.T.C. No.944 of 2009 pending on the file of the Judicial Magistrate No.II, Salem.

2. For the sake of convenience, the parties would be referred to as the complainant and accused.

3. The complainant had filed a case against the accused under Section 200 Cr.P.C. r/w Sections 138 and 142 of Negotiable Instruments Act, 1881, alleging that he lent a sum of Rs.5,00,000/- to the accused for his business purpose after getting assurance from the accused that the said amount should be repaid within three months. When the complainant demanded the return of the amount after expiry of the specified period, the accused had given a post dated cheque bearing No.072139 dated 23.10.2008 drawn on UTI Bank Ltd., Sharptronics Shopping Complex, Salem for a sum of Rs,5,00,000/-, which, on presentation, got dishonored on 24.10.2008 with an endorsement "insufficient funds" in the account of the accused.

4. It is further alleged that the complainant immediately sent a legal notice dated 30.10.2009 to the accused and failure on the part of the accused either to repay the amount or respond to the legal notice resulted in lodging a complaint under Sections 138 and 142 of Negotiable Instruments

Act, 1881. Learned Judicial Magistrate No.II, Salem, finding prima facie materials against the accused, has taken the complaint on file in S.T.C. No.944 of 2009.

5. Learned counsel for the accused submitted that since the accused requested the complainant to become a member in the Chit transaction being conducted by the Shriram Chits Tamilnadu Pvt. Ltd., for a sum of Rs.1 Crore, the accused consented for the same with a condition that the accused should give a blank cheque, as the chit amount is very high. The accused, under the fond hope that the complainant would pay the subscription amount without any default, had given a blank cheque to the accused, but to the contrary, the complainant had only paid the first month subscription of Rs.2,50,000/- and thereafter, was irregular in payment of subscription and did not continue the chit.

6. Learned counsel for the accused further submitted that though the complainant got back his subscription, he did not return the blank cheque as promised by him, while receiving the amount, rather he initiated proceedings against the accused under N.I.Act. In support of his submission, he has strongly relied upon the acknowledgment letter dated 07.04.2009 given by the complainant, wherein it has been inter alia stated that since he was not in a position to pay such a high monthly subscription, he wanted to quit the chit and on getting back his subscription amount, the blank cheque would be returned to him.

7. However, there is no iota of material produced by the accused with regard to delivery and receipt of the letter dated 07.04.2009 by the complainant and therefore, it cannot be taken as a base for quashing the entire case against the accused.

8. Learned counsel for the accused has also submitted that the complainant is an influential person in the locality and has been preventing the accused from attending the Court, so that a warrant could be issued against the accused. Contending that there is no liability on the part of the accused to pay any amount to the complainant, it is prayed that the case in S.T.C. No.944 of 2009 is liable to be quashed.

9. Per contra, it was contended by the learned counsel for the complainant that having received the amount for development of his business, the accused has been attempting to escape from his liability in repayment of the amount, which forced the complainant to knock at the doors of this Court for realizing his amount. The accused, in order to escape from the clutches of law, has filed this vexatious petition by falsely averring some cock and bull stories in the petition and since there are several disputes involved in this case, that can be unfolded only through the conduct of trial and therefore, the petition is liable to be dismissed with heavy costs.

10. Heard the learned counsel on either side and perused the material documents available on record.

11. A careful reading of the complaint dated 17.12.2008 filed under Section 138 of N.I.Act, would reveal that the complainant had shown his helping hand to the accused by way of lending Rs.5,00,000/- to him for improvement of his business and since it was not repaid to the complainant in time, when demanded, the entire dispute started. According to the accused, he insisted upon the complainant to join as a member in the chit, for which, the blank cheque was given to him with a hope that he would pay the monthly subscription payable to the Shriram Chit Fund, which, in turn, was utilized by the complainant for wrongful gain, even though there was no amount payable to him.

12. It is trite law that while dealing with a quash application, this Court should not embark upon disputed questions of fact. When there is prima facie material to show that the accused has committed the offence, it is not open to quash the prosecution in exercise of the powers under section 482 Cr.P.C. The Hon'ble Supreme Court in the case of S.Krishnamoorthy v. Chellammal, reported in AIR 2015 SC 3182 in paragraph 6 has relied upon an earlier judgment in Padal Venkata Rama Reddy v. Kovvuri Satyanarayana Reddy, (2011) 12 SCC 437, wherein in para 32 it is held as follows:

"It would not be proper for the High Court to analyse the case of the complainant in the light of all the probabilities in order to determine whether conviction would be sustainable and on such premise arriving at a conclusion that the proceedings are to be quashed. In a proceeding instituted on a complaint, exercise of inherent powers to quash the proceedings is called for only in a case in which the complaint does not disclose any offence or is frivolous, vexatious or oppressive. There is no need to analyse each and every aspect meticulously before the trial to find out whether the case would end in conviction or acquittal."

13. In the present case on hand, the points raised by the learned counsel for the accused are disputed questions of fact, which cannot be looked into in a petition under Section 482 Cr.P.C., in the light of the law laid down by the Hon'ble Supreme Court in the above case. Whether the impugned cheque dated 23.10.2008 was given in discharge of liability or as security is a disputed fact, which has to be decided only during trial. Under such circumstances, it is not open for this Court to invoke inherent jurisdiction of this Court under Section 482 Cr.P.C. at this stage to quash the prosecution.

14. In the result,

a) this Criminal Original Petition is dismissed;

b) the learned Judicial Magistrate No.II, Salem is directed to proceed with the case in S.T.C.No.944 of 2009 by conducting the trial on day-to-day basis without giving any adjournments to either parties and disposed of the same within a period of three months from the date of receipt of a copy of this order;

c) the petitioner is permitted to raise all the grounds raised in this petition before the learned Judicial Magistrate No.II, Salem in S.T.C.No.944 of 2009.

Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-ix)

//True Copy//

Sub Assistant Registrar

ar/vs

To:

The Judicial Magistrate No.II,
Salem.

+ 1 cc to Mr. K. Raja, Advocate Sr.78035
+ 1 cc to Mr.C. Prabakaran, Advocate Sr.77999

(Cs-ix)
EU(12/07/2018)

Cr1.O.P.No.22353 of 2010

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