IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2017

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

Crl.O.P.No.738 of 2011
and
M.P.Nos.1 and 2 of 2011

R.A.Samy ...Petitioner/Accused

Vs.

C.Ravichandran
Rep. by his Power of Attorney
Mr.E.Jaganathan ...Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in S.T.C.No.571 of 2010 on the file of the learned Judicial Magistrate No.3, Salem and quash the same.

For Petitioner : Mr.V.Krishnamoorthy

For Respondent : Mr.P.Jagadeesan

ORDER

This criminal original petition is preferred by the petitioner/accused to call for the records in S.T.C.571 of 2010 on the file of the learned Judicial Magistrate No.3, Salem and quash the same.

2.Brief case of the petitioner/accused:

The prosecution case is that the complainant was doing textile business and the petitioner/accused used to have credit basis to the complainant. In the course of business transaction the petitioner/accused owed a sum of Rs.9,74,482/- as on date. As a part of the payment, the petitioner/accused issued 11 post dated cheques bearing Nos.627963,627960,627950, 627958, 627959, 62795, 627955, 627954, 627953, 627952, 627951,drawn on State Bank of Bikaner & Jaipur to discharge liability of Rs.5,70,000/- and also assured that he will pay the remaining amount within a period of six months. The complainant presented all the cheques for collection through his Bank HDFC Bank, Salem on 7.10.2009. But to his dismay same was returned dishonored for Payments stopped by drawer on 8.10.2009. The complainant issued a statutory legal notice on 25.10.2009 to the petitioner/accused. The same was received by the petitioner/accused on 29.10.2009 and sent false reply notice on 19.11.2009 to the complainant. Hence the respondent/complainant filed the complaint under section 138 of Negotiable Instruments Act, the same was taken on file in C.C.No.571 of 2010. Aggrieved over the same, the petitioner/accused preferred this quash petition.

3.The learned counsel for the petitioner/accused submits that the alleged cause of action has arisen on 29.10.2009 for the complainant to file a complaint. Hence the complaint ought to have been filed within 45 days from 29.10.2009 i.e. on 11.12.2009 but it has been filed on 14.12.2009. Therefore the complaint has not been filed within the time stipulated under section 138 of the Negotiable Instruments Act. There is a delay of one day in filing the complaint.

4.The learned counsel for the petitioner/accused submits that time and again the Hon'ble Apex Court and this Court have held that time bared complaints have to be quashed and in the present case, the complaint was filed after the statutory period of 45 days.

5.The learned counsel for the petitioner/accused submits that even assuming that the complaint has legal legs to stand but it has to be thrown out for the simple reason that the statutory notice issued by the advocate is without the signature of the advocate. Hence the complaint was returned by the trial Court. Therefore even on 14.12.2009 the complaint is an invalid complaint and hence the complaint which was filed on 14.12.2009 is non est before the law.

6.The learned counsel for the petitioner/accused submits that there is no liability exists for the complaint to be filed, since the accused has denied the liability in his reply notice stating that the cheques were given as security and that debit notes raised by the accused was not accounted and without adjusting the debit note the complainant is claiming the full amount as per the invoices. Hence the accused has given stop payment instructions to the bank and also a telegram was issued. In these circumstances proceedings with the trial of the case could cause prejudice to the petitioner/accused.

7.The learned counsel for the petitioner/accused submits the petitioner is prosecuted as Director of a company which is a legal entity; unless the company is made an accused the complaint is not maintainable against the petitioner.

8.The learned counsel for the petitioner cited the following decision in support of his contentions:

(2012) 3 SCC (Crl) 241, (2012)5 SCC 661 Aneeta Hada Vs. Godfather Travels and Tours Private Limited.

9.The learned counsel appearing for the respondent opposed the contentions of the petitioner/accused and sought for dismissal of the quash petition on the ground that all these points should be agitated by the petitioner/accused before the trial Court.

10.I heard Mr.V.Krishnamoorthy, learned counsel for the petitioner and Mr.P.Jagadeesan, learned counsel for the respondent and perused the entire materials available on record.

11.It is made clear that whether the respondent/complainant has made his claim against this petitioner in the individual capacity or in the name of Company. All these points in respect of impleading the Company and what purpose of the stop payment letter was given by the petitioner/accused should be decided in the trial only and not under the provision of Section 482 of Cr.P.C. Hence, this petition is liable to be dismissed.

12.In the result:

a) This Criminal Original Petition is dismissed and the petitioner/accused is permitted to raise all the grounds in the criminal original petition before the trial Court;

b) The trial Court is directed to dispose the S.T.C.No.571 of 2010, pending on the file of the learned Judicial Magistrate No.3, Salem, 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 and the petitioner/accused is directed to appear whenever his appearance is necessary in the Court. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vs

To

The Judicial Magistrate No.3, Salem.

+1cc to Mr.V.Krishnamoorthy, Advocate, S.R.No.73884
+1cc to Mr.P.Jagadeesan, Advocate, S.R.No.73880

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and
M.P.Nos.1 and 2 of 2011

PM(CO)

RRS(02/04/2019)