



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2017
CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CrI.O.P No.28447 of 2009
and
M.P.No.1 of 2009

Rajeswaran Samuel

... Petitioner

vs.

M/s.Barclays Bank PLC
No.15/2, South Leith Castle Street,
Foreshore Estate, Pattinapakkam,
Chennai - 600 028.
Represented by its Associate Legal Manager,
Mr.Manish Xavier

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.10461 of 2009 pending on the file of the learned XXIII Metropolitan Magistrate Court, Saidapet, Madras and quash the same.

For Petitioner : M/s.M.Vidya

For Respondent : No Appearance

ORDER

The petitioner has filed the present Criminal original petition invoking the inherent power of this Court under Section 482 of CrPC to quash the private complaint in CC.No.10461 of 2009 under Section 138 to 142 of Negotiable Instruments Act (herein after referred as NI Act).

2.It is the case of the petitioner is that the above complaint came to be filed against him by the respondent herein under Section 138 to 142 of Negotiable Instruments Act claiming that the petitioner has failed to honour the subject Cheque issued towards his liability of Sum of Rs.6,114/- to partly discharge a personal loan obtained from the respondent.

3.The case as projected in the complaint is that the petitioner having entered a personal loan agreement with the



respondent herein had issued a Cheque bearing No.672688 dated 04.05.2009 drawn on ICICI bank towards part discharge of the said loan for a sum of Rs.6,114/-. When the Subject cheque was presented for encashment by the complainant before his banker namely HDFC Bank Ltd, Delhi and the same came to be dishonored for want of funds on 11.05.2009. Thereupon the respondent issued a legal Notice on 27.05.2009 and the notice was duly received by the petitioner. However as there was no response from the petitioner, the respondent herein filed the above private complaint in CC.No.10461 of 2009 on the file of XXIII Metropolitan Magistrate Court, Saidapet, Chennai.

4. According to the petitioner, he is an insolvent and his insolvency was declared in I.P.No.52 of 2009 by this Hon'ble Court vide an order dated 26.03.2009. Originally the petitioner filed I.P.No.52 of 2009 under the Presidency Towns Insolvency Act 19 of 2009 and this Hon'ble Court was pleased to adjudicate him as an insolvent and was also pleased to order interim protection from arrest in respect of the petition schedule debts in Application No.119/2009 wherein the respondent was also arrayed as one of the creditors. In furtherance of order of adjudication, the Official Assignee took charge of the assets and liabilities of the petitioner and thereafter filed the schedule of affairs as per section 25 of the Insolvency act, wherein notice was ordered by this Hon'ble Court to the petitioner's creditors including the respondent herein. The said notice remained served on the respondent herein. However he failed to appear and prove his debts to the official assignee in the insolvency proceedings on the file of this Hon'ble court. That apart the petitioner by way of reply to the earlier notice dated 11.4.2009 of the respondent herein, has sent a reply notice dated 21.04.2009 noticing the respondent with regard to the adjudicating the order and the interim protection order made in I.P.No.52 of 2009 by this Court.

5. However, the respondent without addressing his grievance under Insolvency Act before the Official Assignee, but to rope the petitioner herein with criminal prosecution has issued a notice dated 27.05.2009 under Section 138 of Negotiable Instruments Act, 1881 claiming that the cheque (obtained blank from the petitioner at the time of granting loan) for Rs.6,114/- dated 04.04.2009 was returned dishonour.

6. Thus the petitioner with plea of the filing of above complaint as an abuse of process of law, seeks to quash the complaint filed by the respondent.

7. I heard M/s.M.Vidya, learned counsel for the petitioner



15. In the result, the present Criminal Original Petition succeeds and accordingly the complaint in C.C.No.10461 of 2009 on the file of the learned XXIII Metropolitan Magistrate, Saidapet, Chennai is quashed as not maintainable and an abuse of process of law. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vs

To

The XXIII Metropolitan Magistrate Court,
Saidapet, Chennai.

The section Officer criminal section, High Court Madras.

+lcc to Ms.M.Vidya, Advocate, S.R.No.16167

Crl.O.P.No.28447 of 2009
and M.P.No.1 of 2009

GMR(CO)
RRK(20/02/2018)