

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.04.2017
Delivered on : 03.11.2017

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

CRL.O.P.No.28841 of 2010
and
M.P.Nos.1 and 2 of 2010

K.Geetha Krishnan

.. Petitioner/Accused

Vs

M.P.Dhakshina Moorthy

.. Respondent/Complainant

PRAYER: Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in C.C.60 of 2006 pending on the file of the Judicial Magistrate No.III, Salem and quash the same.

For Petitioner : M/s.T.Rama Devi

For Respondent : Mr.J.Ramakrishnan

ORDER

This Criminal Original Petition has been filed by the petitioner to call for records in C.C.No.60 of 2006 pending on the file of the learned Judicial Magistrate No.III, Salem and to quash the same.

2. The respondent lodged a private complaint under Section 200 of Cr.P.C. before the learned Judicial Magistrate No.III, Salem for the offence under Sections 138 and 142 of Negotiable Instruments Act against the petitioner showing her as an accused alleging that the petitioner was the Proprietor of Sri K.G. Tex and in view of the purchase of yarn by her from the complainant, she had issued four cheques to the tune of Rs.3,80,240/-. When the complainant presented the cheques for encashment, the same were returned by the complainant's bank as dishonoured to the complainant with the petitioner's bank endorsement as payment stopped. The act of the petitioner stopping payment of cheques without any valid reason is liable to be prosecuted under Section 138-A of N.I. Act. According to the complainant, he had issued legal notice to the petitioner. Despite receipt of the

notice, the petitioner has not repaid the amount. Hence, the complaint.

3. The learned Magistrate has taken cognizance of the offence under Section 138 of N.I. Act in C.C.No.60 of 2006 and issued summons to the petitioner/accused.

4. The petitioner is seeking quashment of the criminal proceedings on the following grounds:

- (i) The learned Magistrate ought not to have taken the above case on its file as the cheques show the petitioner's name as Sree K.G.M.Tex whereas the statutory notice and the complaint shows the name as Sri K.G.Tex.
- (ii) The perusal of the records would reveal that the complainant had not made out prima facie case.
- (iii) The reply notice issued by the complainant dated 07.04.2004 states that the petitioner is a broker.
- (iv) The complainant has wrongly described the petitioner as an accused.
- (v) The complainant has issued single statutory notice to the petitioner when the cheques show different dates.
- (vi) The learned Magistrate erroneously had taken up the complaint on his file, which is against law and the same has to be set aside.

5. The learned counsel for the respondent submitted that the allegations set out in the petition have to be proved only during trial. By setting out false allegations, the petitioner has filed this petition and the same cannot be entertained.

6. The grievance of the petitioner is that she had business with the complainant and at one stage, she stopped the business with the complainant. Aggrieved by the same, the complainant entered into the premises of the petitioner on 02.03.2004 and had taken six cheques after threatening her. Aggrieved by the said act, the petitioner lodged a complaint before the Salem Police Station, but no action was taken. Hence, the petitioner filed a complaint before the Commissioner of Police on 10.03.2004 and she had also issued legal notice. The complainant appeared before the police and had given undertaking that he will not present the cheques. Recording the undertaking, the enquiry was closed. Despite undertaking, on 15.07.2004, the complainant presented the cheques for collection and payment stopped by the drawer.

7. The main grievance of the petitioner is that the complainant had issued legal notice showing the petitioner as

Proprietor of Sri K.G.Tex, but the cheques show the name as Sree K.G.M. Tex and also the complainant had filed the complaint in the name of Sri K.G.Tex, which would clearly establish that there were material difference in the cheques in question.

8. Whether the cheques in question were issued by the petitioner in favour of the complainant to discharge the liability and when presented for encashment, the cheques were returned as stop payment instructions were received from the petitioner, are all issues to be decided after conclusion of the trial and at this stage, the same cannot be decided.

9. The argument of the petitioner is that the firm which had issued the alleged cheques in favour of the complainant has not been made as party and therefore, the complaint is liable to be quashed.

10. On the other hand, by relying upon the decision of this Court in M/s.Egmore Benefit Society Ltd. v. K.Balasigamani, reported in 1998 (II) CTC 372, the learned counsel for the respondent/complainant submitted that the name of the firm is only a compendious name enabling its Partners to carry on their business in that name and the partnership firm acts only through its partners...

11. In M/s.Egmore Benefit Society Ltd. v. K.Balasigamani, supra, the learned Single Judge of this Court held as under:

"15. The second point urged by the learned senior counsel for the accused, does not appeal to me at all. The apparent tenor of the cheque forming the subject matter of the complaint indicates that it has been issued for and on behalf of the firm Ramu and Company signed by the partner. The name of the firm is only a compendious name enabling its Partners to carry on their business in that name. The partnership firm acts only through its partners. I have already held in this case that the prosecution of the firm is not a mandatory requirement of law."

12. The person who is shown as an accused in this case is the person who had signed the cheque and, therefore, the petitioner cannot contend wrong description of accused. The necessity to comply with the requirements of Section 141 of the N.I. Act would arise only when either the company or the person who had signed the cheque is not before the Court. In other words, when the company or the person who signed the cheque is before the Court as an accused, there need not be any further allegation at all as contemplated under Section 141 of N.I. Act. Further, as per the decision of the Apex Court in U.P. Pollution Control Board v. M/s.Modi Distillery, reported in AIR 1988 SC

1128, the learned Magistrate empowered to call upon the complainant to take steps to correctly describe the accused before that Court, if needs.

13. The other ground raised by the petitioner is that complainant has issued single statutory notice to the petitioner when the cheques show different dates. There is no bar in issuing single statutory notice to the petitioner. In the case on hand, though the act of issuance of 4 or 6 cheques was on different dates, in view of the fact that a demand was made by issuing a common notice, the complaint cannot be said to be vitiated.

14. On overall analysis of the materials available on record, this Court is of the view that the averments set out in the present petition are matter of evidence and at this stage, it cannot be decided that the complainant entered the premises of the petitioner and had taken away six cheques after threatening her.

15. For the foregoing reasons, this Court is of the view that no valid grounds have been made out to quash C.C.No.60 of 2006 pending on the file of the learned Judicial Magistrate No.III, Salem and, therefore, this petition is liable to be dismissed.

16. In the result,

(a) The Criminal Original Petition is dismissed.

(b) The learned Judicial Magistrate No.III, Salem is directed to proceed C.C.No.60 of 2006 and dispose of the same within a period of three months from the date of receipt of a copy of this order, without influencing any reason assigned in this order.

(c) The petitioner/accused is permitted to raise all grounds raised in this Criminal Original Petition before the learned Judicial Magistrate No.III, Salem in C.C.No.60 of 2006.

(d) Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vs

To

The Judicial Magistrate No.III,
Salem.

+1cc to Mrs.T.Ramadevi, Advocate, S.R.No.78628

+1cc to Mr.J.Ramakrishnan, Advocate, S.R.No.78564

CRL.O.P.No.28841 of 2010
and
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SJ(CO)

rrs 28/11/2018



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