IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.03.2017

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

CRL.O.P.No.29509 of 2010
and
M.P.Nos.1 and 2 of 2010

D.Murugan .. Petitioner

Vs

P.Kalarani
rep. By her Power Agent, Baskar
No.19, 75th Street
R.V.Nagar, Jafferkhanpet
Chennai - 600 083 .. Respondent

PRAYER: Petition filed under Section 482 of the Code of Criminal Procedure to call for records and quash the proceedings in C.C.No.6864 of 2010 on the file of the learned XXIII Metropolitan Magistrate, Saidapet, Chennai.

For Petitioner : Mr.T.R.Shivaram

For Respondent : Mr.D.Senthilkumar

ORDER

The petitioner has filed this original petition under Section 482 of the Criminal Procedure Code to quash the proceedings pending in C.C.No.6864 of 2010 on the file of the learned XXIII Metropolitan Magistrate Court, Saidapet, Chennai.

2. The facts in brief are as under: The petitioner is the accused while the respondent is the complainant. It is the grievance of the respondent complainant, as could be seen from the complaint, that the petitioner is liable to pay the respondent a sum of Rs.25 lakhs and qua the same, the petitioner issued a Cheque bearing No.778010, dated 25.2.2010 for a sum of Rs.25 lakhs. It is stated that when the cheque was presented for collected on 10.3.2010, the same was returned for the reason “insufficient funds”. Thereafter, a notice was issued on 31.3.2010 and the same was received by the petitioner on 7.4.2010, to which the petitioner is stated to have submitted his reply on 19.4.2010. Thereafter, a complaint was filed on 30.4.2010. The learned XXIII Metropolitan Magistrate, Saidapet, Chennai, issued process.

3.In this backdrop, the present criminal original petition is filed for the relief stated supra.

4.I heard Mr.T.R.Shivaram, learned counsel for the petitioner and Mr.D.Senthilkumar, learned counsel for the respondent and perused the entire materials available on record.

5.It is the contention of the learned counsel appearing on behalf of the petitioner that the whole proceedings initiated against the petitioner is an abuse of process of Court, inasmuch as the complaint does not attract the ingredients of the offence under Section 138 of the Negotiable Instruments Act and the complaint filed by the power agent is not maintainable for the reason that the power of attorney is not executed as per Section 85 of the Indian Evidence Act.

6. The learned counsel for the petitioner disputed the liability of the petitioner and submitted that only a small sum was taken as loan by the petitioner from the complainant and the same was duly repaid and at the time of lending the amount, the complainant had received blank signed cheque and blank signed promissory note as security and in spite of repayment of the loan amount, the complainant had refused to return the said signed cheque and signed promissory note.

7. The learned counsel appearing for the petitioner further submitted that a complaint was lodged against the complainant on 4.2.2010 and it was registered in C.S.R.No.19 of 2010, alleging that the complainant has committed various offences under Sections 380, 467 and 420 IPC and a case was registered in C.C.No.192 of 2010 before the learned Judicial Magistrate, Vanur, under Sections 148, 294, 352, 500 and 506(ii) of the Indian Penal Code and thereafter, another case in C.C.No.193 of 2010 was filed against the complainant before the learned Judicial Magistrate, Vanur, under Sections 468, 477 and 420 of the Indian Penal Code, and the above said vital facts, according to the counsel, clearly depict that the complainant has filed the complaint making use of blank signed cheque.

8. Per contra, the learned counsel appearing for the respondent submitted that all the contentions raised by the petitioner may be argued before the Court below during trial and that the process issued by the Court below does not warrant interference.

9. A bare perusal of the power of attorney produced before this Court shows that the non judicial stamp paper was issued on 28.4.2010. The deed of power of attorney was executed at Chennai on 30.4.2010. However, the same was signed by the parties, that is the Principal (the original lender), and the power of

attorney (her husband) only on 29.5.2010, whereas the power of attorney had lodged the complaint under Sections 138 and 142 of the Negotiable Instruments Act on 30.4.2010, i.e., even prior to affixing their signatures to the deed of power of attorney. Therefore, as on 30.4.2010, the power agent was not empowered to lodge a complaint. The said vital fact is not disputed by the learned counsel for the respondent by producing any document or filing any counter affidavit. Therefore, in my considered opinion, the very basis for initiation of the proceedings is vitiated. On this score alone, the original petition is liable to be allowed.

10. In such view of the matter, this criminal original petition is allowed and the proceedings pending in C.C.No.6864 of 2010 on the file of the learned XXIII Metropolitan Magistrate Court, Saidapet, Chennai, are quashed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

vs

To

The XXIII Metropolitan Magistrate,
Saidapet,
Chennai.

+1cc to Mr.K.V.Sridharan, Advocate, S.R.No.16199

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rrs 31/10/2018