BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.08.2017

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

Crl.O.P.(MD) No.11026 of 2017
and
Crl.M.P(MD)Nos.7524 & 7525 of 2017

M.H.Ajmali Ali ... Petitioner

-Vs-

State Bank of India ,
Represented by its Branch Manager,
S.Nagarajan,
No.4/69D, Kovilur - 7587,
Pin - 639 207,
Aravakurichi Taluk,
Karur District. ... Respondent

Prayer in CRL OP(MD). 11026/ 2017 :
Criminal Original Petition filed under section 482 of code of Criminal Procedure, praying to Call for the records and quash the pending proceedings in C.C NO. 162 of 2015 filed under section 138 of Negotiable instrument Act, at the threshold, initial and preliminary stage itself which is pending on the file of the Learned VII J.M Court (FTC at M.L) at Karur.

For Petitioner : Mr.M.K.Hidayathullah

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O R D E R

This Criminal Original Petition has been filed to quash C.C.No.162/2015 pending on the file of the learned Judicial Magistrate (F.T.C. at Magistrate Level) at Karur.

2.The case of the petitioner is that he availed loan from the respondent bank in the year 2005. As per the loan agreement, the petitioner was directed to pay the loan amount on equated monthly installments of Rs.10,260/-. It was the case of the petitioner that the petitioner's loan account was classified as NPA. However, in connection with the loan transaction, several blank cheques were also obtained from the petitioner by the bank in the year 2005. Subsequently, it is also admitted by the petitioner himself that the account of the petitioner is classified as NPA and the Bank had issued notice under Section 13(2) of the SARFAESI ACT. It is the further case of the petitioner that the proceeding was initiated under the SARFAESI Act, for the recovery of whole money, which was advanced to the petitioner by way of loan amount along with interest. The Bank also initiated action to recover the loan by bringing the property of the petitioner for public auction invoking their right under the provisions of SARFAESI Act.

3.It is further stated that the respondent bank has initiated action under Section 138 of the Negotiable Instruments Act, 1881, on the basis of blank cheques which were handed over to the bank by the petitioner in the year 2005 as security for the loan transaction. It is only in the said circumstances, the petitioner has challenged the Criminal Proceedings in C.C.No.162 of 2015 before the Judicial Magistrate, (FTC at Magistrate Level) at Karur.

4.The main ground which the petitioner has brought to the notice of this Court to quash the proceedings is that the cheques are handed over only as security for the loan transaction in the year 2005 and hence, the criminal proceedings initiated on the basis of the cheques, which were issued in the year 2005, is unsustainable in law.

5.Secondly, it is the contention of the petitioner that the cheques that were issued by the petitioner were blank cheque when it was handed over to the Bank in the year 2005. The entire money advanced to the petitioner was secured by mortgage and other securities and that there was no consideration for the cheques.

6.Thirdly, it is submitted by the petitioner that no notice was issued before the case is filed, hence, the criminal proceedings is liable to be quashed. The petitioner has also alleged fraud against the respondent bank and that it is a criminal case which has been instituted with the ulterior motive of wrecking vengeance for not complying with the fanciful, illegal and imaginary demand of the respondent bank. The para 10 of the complaint reads as follows:

> "Cause of action for the complaint arose on 07.02.2005 when the Accused availed a loan of Rs.10,88,000.00 from the complainant bank and executed a Memorandum of Term Loan Agreement for Housing Loan, on 05.03.2015 when the Accused became liable to pay a sum of Rs.21,65,426.00 towards principal, interest, etc., on 05.03.2015 when the accused had issued the post dated Cheque in question, on 06.03.2015 when the complainant presented the cheque for collection, on 06.03.2015 when the cheque was returned unpaid due to insufficiency of funds, on 30.03.2015 when the complainant issued the statutory notice, on 31.03.2015 when the accused managed

to return the notice, on 15.04.2015 when the grace time of 15 days given under the notice expired and on all subsequent dates the failure on the part of the accused in paying the amounts continues and at Kovilur, Aravakurichy Taluk, Karur District where the complainant bank situated, where the cheque was presented and returned within the limits of Aravakurichy Police Station within the jurisdiction of this Court.”

7.The contentions of the petitioner, that the blank cheque were issued long back in the year 2005 and that there was no proper notice before filing the complaint, are all contentious issues to be decided after trial. In view of the stand taken by the respondent bank, this Court is of the view that at this stage, the prayer seeking to quash the criminal case can not be decided on the basis of the version of the petitioner alone and the facts in this case clearly disclose the involvement of disputed questions of facts which has to be resolved only after the full-fledged trial.

8. This Court is not inclined to entertain this petition and hence, this petition is dismissed. Consequently, connected Miscellaneous Petitions are closed. However, the personal appearance of petitioner is dispensed with under his appearance is required by an order of Court.

Sd/-
Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar

To

The Judicial Magistrate (F.T.C. at Magistrate Level),
Karur.

+1 cc to Mr.M.K.Hidayatullah , Advocate in SR.No. 73777

Is/cmr
AE/KP/SAR3/22.09.2017/3P/3C

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