

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.07.2018
Pronounced on : 26.10.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.19969 of 2010

and

M.P.No.1 of 2010

M/s.Associated Book Company,
Rep. by its Proprietor Rajiv Srivatsav,
Mehta House, IIIrd Floor,
7/2, Kondi Chetty Street,
Chennai-600 001. Petitioner/Accused

Vs.

M/s.Silver Touch Investments & Finance,
rep. by its Proprietor Mr.Shiv Kumar Nair,
No.37, 3rd Floor, Khadim's Buildings,
Anna Salai,
Chennai-600 002. Respondent/Complainant

PRAYER: Criminal Original Petition is filed under
Section 482 of the Code of Criminal Procedure, to call
for the records relating to C.C.No.4807 of 2009 pending
before the Learned X Metropolitan Magistrate, Egmore,
Chennai and quash the same.

For Petitioner : Mr.S.L.Sudarsanam
For Respondent : No Appearance

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O R D E R

The petitioner, who is the accused in C.C.No.4807 of
2009 pending on the file of the X Metropolitan Magistrate
Court, Egmore, Chennai for the offence under Section 138
of the Negotiable Instruments Act has filed the above
quash petition.

2.The respondent has not appeared in this case, despite the name of the respondent printed in the cause list. Hence adjourning the case for appearance of the respondent would not serve any purpose. Hence, this Court propose to dispose of the Criminal Original Petition on merits on the basis of the materials available and on the submissions of the learned counsel appearing for the petitioner.

3.The gist of the case is that, the respondent/complainant is an Investments and Finance Company and the petitioner/accused herein is engaged in the business of Book Publishing and distribution. During the course of his business, the petitioner/accused had approached an advocate of the High Court one Mr.Sirajuddin for printing and publishing a book namely "RIGHTS OF PRISONERS" written by the said advocate. An agreement was entered between the petitioner and the respondent to publish the book and the petitioner/accused had approached the respondent/complainant to lend a sum of Rs.1,00,000/- [Rupees One lakh only], which was given as a hand loan executing a Promissory note to the petitioner/accused at the rate of 18% interest per annum.

4.The petitioner/accused having availed the loan and did not bother to make any payment towards the interest and thereby committed default. After several request from the complainant, the petitioner to settle the loan amount and issued a cheque bearing No.216227, dated 01.03.2009, drawn on Allahabad Bank, MCAA George Town Branch, Chennai-1 for a sum of Rs.1,00,000/- [Rupees one lakh only] to the respondent/complainant.

5.After receiving the said cheque, the respondent/complainant had presented the same into his bank account viz., ABN-AMRO, Mount Road Branch for collection and on presentation, the cheque was not honoured and returned by the clearing bank with a return memo dated 18.07.2009 for the reason "PAYMENTS STOPPED BY THE DRAWER". Thereafter, the respondent/complainant sent a statutory notice on 24.07.2009, which was received by the petitioner/accused on 25.07.2009 and he sent a reply dated 01.08.2009 denying the allegations and hence, the respondent/complainant preferred a complaint against the petitioner/accused.

6.The contention of the learned counsel for the petitioner is that the petitioner had issued a notice to the respondent/complainant on 27.02.2009, which was received by the respondent/complainant on 28.02.2010 asking for return of the said cheque, which was given

only as a security. Thereafter, another letter dated 31.03.2010 was sent by the petitioner/accused, which was received by the respondent/complainant on 02.04.2009 for the same reason, there was no denial or reply by the respondent/complainant, thereafter the petitioner/accused instructed his bankers on 26.06.2009 not to honour the cheque, since, the cheque was not issued towards discharge of liability. The petitioner had received the statutory notice and had given a detailed reply, which was not refuted by the respondent.

7.The learned counsel for the petitioner further submitted that, one Sirajudeen, High Court Advocate with whom, the petitioner had earlier entered into an agreement for publishing of the book namely "RIGHTS OF PRISONERS". As per the understanding Sirajudeen transferred the above chit amount repayment to the petitioner/accused towards printing and paper expenses. At his request, the respondent transferred the chit repayment through 18 post dated cheques each for Rs.4,000/-[Rupees four thousand only]. The chit amount monthly repayments were regularly paid and the cheque in issue was given as a security as per the trade practice, despite the books "RIGHTS OF PRISONERS" could not be published. The petitioner/accused had honoured the post dated 18 cheques.

8.It is further contended that till May 2010, the petitioner had made the payments to the tune of Rs.72 thousand and an amount of Rs.28,500/- was paid initially on 24.10.2008 from December 2008 to May 2010. The 18 Nos. post dated cheques have been honoured and paid. Thus, the petitioner had repaid the entire amount of due amounting to Rs.1 lakh on the advocate account, despite the same, the book publication could not be done, due to various reasons.

9.There has been some dispute between the petitioner and the said advocate, since, the petitioner is in the law book sale and publication not to invite wrath from the advocate community. He had honoured and made the payments to the respondent/complainant for the advocate chit, in support of which, the bank statement of the petitioner reflecting the payment have been filed.

10.Considering the submissions of the learned counsel for the petitioner and on perusal of the materials, it is found that the petitioner contention is

acceptable. In view of the same and the respondent refuted the claim, this Court feels that, the continuation of the proceedings against the petitioner before the learned X Metropolitan Magistrate Court, Egmore, Chennai in C.C.No.4807 of 2009 would amount to abuse of process of law.

11.In view of the same, this quash petition stands allowed and consequently the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS v)

//True Copy//

Sub Assistant Registrar

vv2
To

1.The X Metropolitan Magistrate,
Egmore, Chennai.

2.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.L.Sudarsanam , Advocate SR.No. 74038

Cr1.O.P.No.19969 of 2010

ASK(26/11/2018)

सत्यमेव जयते

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