IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 09.10.2018

PRONOUNCED ON : 12.10.2018

CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.Nos.22306, 22307 and 22308 of 2016
and
Crl.M.P.Nos.10372, 10374, 10376 of 2016
and Crl.M.P.Nos.6093, 6094, 6095 of 2017

S.Sukumar ... Petitioner

Vs.

S.K.Kumar ... Respondent

PRAYER: Criminal Original Petitions have been filed under Section 482 of Cr.P.C., to call for the records relating to C.C.Nos.1108 of 2016 and 1109 of 2016 on the file of the learned Fast Track Court No.III, Metropolitan Magistrate, Saidapet, Chennai in Crl.O.P.Nos.22306 & 22308/2016 and C.C.No.1246 of 2016 on the file of the learned XVII Metropolitan Magistrate, Saidapet, Chennai and quash the same as against the petitioner.
(Amended as per the order of this court dated 03.10.2016 and made in Crl.m.P.Nos.10533 and 10534/2016 , Crl.O.P.Nos.22306 and 22307/2016)

For Petitioner : Mr.V.Karthick, Senior Counsel for M/s.S.Anil Sandeep and V.Annaraja

For Respondent : Mr.N.R.Elango, Senior Counsel for Mr.Yogesh Kannadasan

O R D E R

These Criminal Original Petitions have been filed by the accused under Section 482 Cr.P.C. to quash the proceedings against him in C.C.Nos.1108 of 2016 and 1109 of 2016 on the file of the Fast Track Court No.3, Metropolitan Magistrate, Saidapet, Chennai and C.C.No.1246 of 2016 on the file of the XVII Metropolitan Magistrate, Saidapet, Chennai.

2. The respondent herein has filed private complaints stating that the petitioner's son Mr.S.S.Rahul was engaged for marriage with Ms.K.Aishwarya, the daughter of the respondent. The engagement was done at Hotel Leela Palace, Chennai on 22.03.2015 and the marriage was fixed on 20.05.2015 to be held at Codissia Hall, Avinashi Road, Coimbatore. Thereafter,

unfortunately, differences arose between Mr.S.S.Rahul and Ms.K.Aishwarya and the marriage had to be called off on the intervention and consent of both side parents and relatives. Subsequently, on 13.05.2015 a compromise agreement was executed between the petitioner and the respondent. As per the said compromise agreement, the petitioner herein has to pay a sum of Rs.5 Crores towards the marriage expenses done by the respondent herein. Accordingly, the petitioner herein has paid a sum of Rs.25,00,000/- as cash and Rs.50,00,000/- through demand drafts. The petitioner has agreed to pay the balance amount of Rs.4,25,00,000/- within two months i.e., on or before 12.05.2015 and issued eight cheques each for Rs.50,00,000/- and one cheque for Rs.25,00,000/- in favour of the respondent herein. Further a sale agreement was also executed between the petitioner and the respondent on the same date stating that the petitioner has to pay the aforesaid balance amount of Rs.4,25,00,000/- within two months, failing which, the petitioner shall execute a sale deed in respect of his property in favour of the person, as the respondent directs. Since the petitioner did not pay the amount within the time fixed in the compromise agreement, the respondent herein has filed the aforesaid cases against the petitioner herein under Sections 138 of the Negotiable Instruments Act and 420 IPC.

3. Mr.V.Karthick, learned Senior Counsel for Mr.S.Anil Sandeep appearing for the petitioner has submitted that the aforesaid compromise agreement and sale agreement were obtained by exercising coercion and fraud and hence, the petitioner has lodged a complaint before the police on 29.06.2015 and based on the same, a case has been registered in Crime No.449 of 2015 under Sections 420, 120-B, 384, 341, 506(ii) r/w 34 of IPC, on the file of the Central Crime Branch at Chennai and the same is pending for investigation. He further submitted that the petitioner herein has also filed a suit in O.S.No.4242 of 2015 on the file of the III Assistant City Civil Court at Chennai to declare the aforesaid compromise agreement and sale agreement have been obtained by fraud and coercion and hence, they are null and void and for permanent injunction to restrain the respondent herein from claiming any right based on the aforesaid documents and the said suit is still pending. He further submitted that in the compromise agreement itself, it is categorically averred that the aforesaid cheques were issued only for security purpose and in such a case, the respondent should not have filed a private complaints by using the said cheques. He further submitted that in the aforesaid sale agreement also, it is specifically stated that if within the period of two months, the amount is not paid by the petitioner herein, the petitioner has to execute a sale deed in favour of the person as the respondent directs and therefore, the respondent is not entitled to file a private complaints based on the aforesaid cheques.

4. The learned Senior Counsel for the petitioner in support of the aforesaid contentions, relied upon the following decisions:-

1. Harshendra Kumar D. Vs. Rebatilata Koley and Others (2011) 3 SCC 351.

2. Vijay Vs. Laxman and Another (2013) 2 SCC (Cri) 237 = (2013) 3 SCC 86.

3. Balaji Seafoods Exports (India) Ltd. Rep. by its Director, Chalapathy and Another Vs. Mac Industries Ltd., 1999 (1) MWN (Cr.) 7.

5. The learned Senior Counsel for the respondent has submitted that the petitioner herein has stated in his petition that on 13.05.2015, his relative Mr.Nallayyan was also present along with him. He further submitted that the said Mr.Nallayyan is an Advocate practising at Madurai and as such that the petitioner would have obtained legal advice from the said Mr.Nallayyan. But, the petitioner has not lodged the complaint immediately. He lodged a police complaint only on 29.06.2015 i.e., nearly after one and half month. He further submitted that the petitioner herein has filed a suit in O.S.No.4242 of 2015, but, no interim injunction was granted. He further submitted that since the petitioner has raised a plea of fraud, coercion etc., the burden is upon him to prove the aforesaid facts. He further submitted that whether the cheque was given as security or not, or whether there was an outstanding liability or not is a question of fact which could have been determined only by the trial Court after recording evidence of the parties. He further submitted that since the petitioner herein has admitted the issuance of cheques, presumption of a legally enforceable debt in favour of the holder of the cheque arises and it is for the accused to rebut the said presumption. He further submitted that the petitioner herein after receipt of statutory notice has not sent any reply and that itself shows that he has not disputed the contents of the said notice. He further submitted that the disputed facts cannot be decided by this Court in the petition filed under Section 482 of Cr.P.C. and therefore, he prayed to dismiss the above petitions. In support of his contentions, he relied upon the decision of the Hon'ble Supreme Court in Sampelly Satyanarayana Rao Vs. Indian Renewable Energy Development Agency Limited (2016) 10 SCC 458.

6. It is an admitted fact that the petitioner's son Mr.S.S.Rahul was engaged for marriage with the respondent's daughter namely Ms.K.Aishwarya, and the engagement was done at Hotel Leela Palace, Chennai on 22.03.2015 and the marriage was fixed on 20.05.2015 to be held at Codissia Hall, Avinashi Road, Coimbatore. It is also an admitted fact that, subsequently, the said marriage was called off and a compromise agreement and a sale agreement were executed on 13.05.2015. It is also an

admitted fact that, in pursuance of the said compromise agreement, the petitioner herein has paid a sum of Rs.25,00,000/- as cash and Rs.50,00,000/- through demand drafts to the respondent herein and for the balance amount of Rs.4.25 crores, the petitioner herein has issued nine cheques (eight cheques each for Rs.50,00,000/- and one cheque for Rs.25,00,000/-).

7. According to the petitioner, the said compromise agreement, the sale agreement and the cheques were obtained by the respondent herein by exercising, coercion, fraud, cheating etc., and hence, he lodged a complaint before the Central Crime Branch at Chennai on 29.06.2015 against the respondent herein and his associates and based on the same, a case was registered in Crime No.449 of 2015 under Sections 420, 120-B, 384, 341, 506 (ii) r/w 34 of IPC. His further case is that he also filed a suit in O.S.No.4242 of 2015 on the file of the III Assistant City Civil Court, to declare the aforesaid agreements are null and void and for permanent injunction not to enforce them.

8. At this juncture, it would be relevant to refer to Section 102 of the Indian Evidence Act, 1892 which reads thus:-

> ''102. On whom burden of proof lies.- The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.
>
> Illustrations
>
> (a) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the Will of C, B's father.
>
> If no evidence were given on either side, B would be entitled to retain his possession.
>
> Therefore, the burden of proof is on A.
>
> (b) A sues B for money due on a bond.
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> The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.
>
> If no evidence were given on either side, A would succeed, as the bond is not disputed and the fraud is not proved.
>
> Therefore, the burden of proof is on B.''

9. From the reading of the aforesaid Illustration (b), it is clear that the burden is upon the person to prove that the document was obtained by fraud. In this case the petitioner has admitted the execution of the compromise agreement, sale agreement and issuance of cheques, but he says that those documents were obtained by fraud and therefore, the burden is upon him to prove that those documents were obtained by fraud. So, merely on the basis of the averments made by the petitioner,

this Court cannot quash the proceedings against the petitioner.

10. In Harshendra Kumar D. Vs. Rebatilata Koley and Others (supra), a private complaint has been filed under Sections 138 and 141 of the Negotiable Instruments Act, 1881, based on the dishonour of the cheques against the Director of the Company, who had resigned prior to the alleged date of offence. The said resignation was accepted by the company and notified to the Registrar of Companies in a prescribed form (Form 32). On the date of alleged offence, the said person was neither Director of the Company nor had anything to do with affairs of the company. Under the said circumstances, the Hon'ble Supreme Court has observed that the materials relied upon by the accused are in the nature of public documents and they are beyond suspicion or doubt and they can be looked into by the High Court in exercise of its jurisdiction under Section 482 Cr.P.C. But, in this case the petitioner has admitted the execution of the compromise agreement and sale agreement. Further he has admitted the issuance of cheques. But, according to him, those documents were obtained by coercion, fraud and cheating. As already pointed out that as per the Illustration (b), attached to Section 102 of the Evidence Act, the burden is upon the person, who pleaded fraud. Therefore, the aforesaid decision will not apply to the facts of this case.

11. In Vijay Vs. Laxman and Another (supra), the accused was convicted by the trial Court for the offence under Section 138 of the Negotiable Instruments Act, against which he filed an appeal before the Sessions Court. The said appeal was dismissed, against which a revision was filed before the High Court and the same was allowed and the judgments of the Courts below were set-aside. Aggrieved by the same, the complainant has filed an appeal before the Hon'ble Supreme Court by special leave. The Hon'ble Supreme Court, considering the evidence adduced before the trial Court, has held that the complainant has miserably failed to prove his case that the cheque was issued towards discharge of the lawful debt. But, in this case, the accused has filed the present petitions under Sections 482 Cr.P.C. to quash the complaints, which were filed against him under Section 138 of the Negotiable Instruments Act. As already pointed out that the petitioner has taken a plea that the documents were obtained by exercising coercion, fraud etc., and the said facts have to be proved by the petitioner by adducing evidence before the trial Court. Therefore, the aforesaid decision cannot be applied at this stage.

12. In Balaji Seafoods Exports (India) Ltd. Rep. by its Director, Chalapathy and Another Vs. Mac Industries Ltd., (supra), on the date when the cheque was handed over, there was no legally enforceable debt or other liability. An undated cheque for Rs.35,00,000/- was handed over as a security for the

purpose of the contract. It was not handed over with the intention of making it as an instrument of immediate negotiation to discharge a subsisting liability or debt. Under the said circumstances, this Court has held that since the undated cheque was given only as a security, provisions of Section 138 of the Negotiable Instruments Act are not at all attracted and accordingly, the complaint was quashed. In this case, the petitioner has not issued undated cheque but, he has issued cheques by putting dates. Further, the liability has been mentioned in the compromise agreement itself. The petitioner has also admitted the execution of the said agreement. However, according to him the said document was obtained by coercion, fraud, etc., As already pointed out, those facts have to be established by the petitioner adducing evidence before the trial Court. Therefore, the aforesaid decision also will not help the petitioner.

13. In Sampelly Satyanarayana Rao Vs. Indian Renewable Energy Development Agency Limited (supra), the Hon'ble Supreme Court in paragraph Nos.12 to 16 has observed as follows:-

> "12. The Crucial question to determine applicability of Section 138 of the Act is whether the cheque represents discharge of existing enforceable debt or liability or whether it represents advance payment without there being subsisting debt or liability. While approving the views of different High Courts noted earlier, this is the underlying principle as can be discerned from discussion of the said cases in the judgment of this Court.
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> 13. In Balaji Seafoods, the High Court noted that the cheque was not handed over with the intention of discharging the subsisting liability or debt. There is, thus, no similarity in the facts of that case simply because in that case also loan was advanced. It was noticed specifically therein – as was the admitted case of the parties – that the cheque was issued as "security" for the advance and was not intended to be in discharge of the liability, as in the present case.
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> 14. In HMT Watches Ltd. versus M.A. Abida, relied upon on behalf of the respondent, this Court dealt with the contention that the proceedings under Section 138 were liable to be quashed as the cheques were given as "security" as per defence of the accused. Negativing the contention, this Court held :- (SCC pp.779-80, paras 10-12)

"10. Having heard the learned counsel for the parties, we are of the view that the accused (Respondent 1) challenged the proceedings of criminal complaint cases before the High Court, taking factual defences. Whether the cheques were given as security or not, or whether there was outstanding liability or not is a question of fact which could have been determined only by the trial court after recording evidence of the parties. In our opinion, the High Court should not have expressed its view on the disputed questions of fact in a petition under Section 482 of the Code of Criminal Procedure, to come to a conclusion that the offence is not made out. The High Court has erred in law in going into the factual aspects of the matter which were not admitted between the parties. The High Court further erred in observing that Section 138(b) of the NI Act stood uncomplied with, even though Respondent 1 (accused) had admitted that he replied to the notice issued by the complainant. Also, the fact, as to whether the signatory of demand notice was authorised by the complainant company or not, could not have been examined by the High Court in its jurisdiction under Section 482 of the Code of Criminal Procedure when such plea was controverted by the complainant before it.

11. In Suryalakshmi Cotton Mills Ltd. v. Rajvir Industries Ltd., this Court has made the following observations explaining the parameters of jurisdiction of the High Court in exercising its jurisdiction under Section 482 of the Code of Criminal Procedure: (SCC pp. 685-87, paras 17 & 22)

"17. The parameters of jurisdiction of the High Court in exercising its jurisdiction under Section 482 of the Code of Criminal Procedure is now well settled. Although it is of wide amplitude, a great deal of caution is also required in its exercise. What is required is application of the well- known legal principles involved in the matter.

* * *

22. Ordinarily, a defence of an accused although appears to be plausible should not be taken into consideration for exercise of the said jurisdiction. Yet again, the High Court at that stage would not ordinarily enter into a disputed question of fact. It, however, does not mean that documents of unimpeachable character should not be taken into

consideration at any cost for the purpose of finding out as to whether continuance of the criminal proceedings would amount to an abuse of process of court or that the complaint petition is filed for causing mere harassment to the accused. While we are not oblivious of the fact that although a large number of disputes should ordinarily be determined only by the civil courts, but criminal cases are filed only for achieving the ultimate goal, namely, to force the accused to pay the amount due to the complainant immediately. The courts on the one hand should not encourage such a practice; but, on the other, cannot also travel beyond its jurisdiction to interfere with the proceeding which is otherwise genuine. The courts cannot also lose sight of the fact that in certain matters, both civil proceedings and criminal proceedings would be maintainable."

12. In Rallis India Ltd. v. Poduru Vidya Bhushan, this Court expressed its views on this point as under: (SCC p. 93, para 12)

"12. At the threshold, the High Court should not have interfered with the cognizance of the complaints having been taken by the trial court. The High Court could not have discharged the respondents of the said liability at the threshold. Unless the parties are given opportunity to lead evidence, it is not possible to come to a definite conclusion as to what was the date when the earlier partnership was dissolved and since what date the respondents ceased to be the partners of the firm."

15. We are in respectful agreement with the above observations. In the present case, reference to the complaint (a copy of which is Annexure P-7) shows that as per the case of the complainant, the cheques which were subject matter of the said complaint were towards the partial repayment of the dues under the loan agreement (Para 5 of the complaint).

16. As is clear from the above observations of this Court, it is well settled that while dealing with a quashing petition, the Court has ordinarily to proceed on the basis of averments in the complaint. The defence of the accused cannot be considered at this stage. The court considering the prayer for quashing does not adjudicate upon a disputed question of fact.''

14. From the aforesaid decision, it is clear that whether the cheques were given as security or not, or whether there was outstanding liability or not is a question of fact which could have been determined only by the trial Court after recording evidence of the parties. It is also clear that the High Court should not have expressed its view on the disputed questions of facts in a petition filed under Section 482 of Cr.P.C ., to come to the conclusion that the offence is not made out. It is also clear that, while dealing with a quashing petition, the Court has to ordinarily proceed on the basis of averments in the complaint. The defence of the accused cannot be considered at this stage.

15. Further, in view of the decision of the Hon'ble Supreme Court in Rangappa Vs. Sri Mohan, (2010) 11 SCC 441, once issuance of a cheque and signature there on are admitted, presumption of a legally enforceable debt in favour of the holder of the cheque arises. It is for the accused to rebut the said presumption, though accused need not adduce his own evidence and can rely upon the material submitted by the complainant. However, mere statement of the accused may not be sufficient to rebut the said presumption. Therefore, this Court is of the view that these petitions are liable to be dismissed.

16. In the result, these petitions are dismissed. It is open to the petitioner to contest the matter in trial Court in accordance with law. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar

vsa
To
1.The Fast Track Court No.III,
Metropolitan Magistrate, Saidapet,
Chennai.

2.The XVII Metropolitan Magistrate,
Saidapet, Chennai

3. Do Through The Chief Metropolitan Magistrate
   Egmore Chennai.

+3 CCS to Mr.Yogesh Kannadasan, Advocate sr 71404 to 71406.
+6 Ccs to Mr.S.Anil Sandeep, Advocate sr 71204, 71202, 71203.

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VD(CO)
SP(27/11/2018)