

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P No.1442 of 2011

and

M.P.Nos.1 and 2 of 2011

A.Velumurugan

... Petitioner

vs.

M/s.Sree Shiva Sakthi Garments,
Represented by its Partner Venkatachalam,
No.1, Esteem Nagar, Chinnakarai Road,
Veerapandi Village,
Tiruppur.

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for records and quash the complaint in STC No.3330 of 2010 on the file of the learned Judicial Magistrate No.1, Tiruppur.

(Amended as per the order of this Court
dated 09.03.2011 in MP.No.2 of 2011)

For Petitioner : Mr.Bharatha Chakravarthy
for M/s.Sai Bharath & Elan

For Respondent : No Appearance

JUDGMENT

The petitioner is before this Court by invoking the inherent power under Section 482 Cr.P.C seeking to quash the impugned complaint in S.T.C.No.3330 of 2010 filed under Section 138, 142 r/w Section 200 of Cr.P.C. The petitioner seeks to quash the above complaint on the grounds of abuse of process of law, and that the complaint on hand is not filed within the prescribed limitation. The above complaint is also an utter false story. In fact the cheque has been misused for the fanciful sum.

2.On perusal of the complaint it is found that it is the case of the respondent as complainant that they conducted a partnership business involving in manufacturing and exporting of Hosiery garments. The petitioner herein who is also engaged in the same business had borrowed a sum of Rs.60,00,000/- from the respondent. Towards repayment of amount due to the respondent, the petitioner issued 2 cheques drawn on Indian Bank bearing

No.898151, 898152 dated 27.10.2009 each for a sum of Rs.30,00,000/-. In order to realize the amount borrowed, the Cheques were presented before bank for encashment, whereas both the cheques remained dishonored for want of sufficient funds. Therefore the above private complaint under Section 200 of Cr.P.C came to be filed by the respondent.

3.It is the case of the petitioner that the entire case of the respondent projecting as if the amount of Rs.60,00,000/- is borrowed by the petitioner is fanciful story as the amount is beyond the comprehension of the respondent. However by misusing the cheques for fanciful story, the above complaint is filed. The complaint is not maintainable under law as it was filed 2 days beyond the period of limitation prescribed in the law and at the time of filing the mandatory Court fee was not paid.

4.It is further case of the petitioner that there is no legal debt or liability at the time when the cheque was issued and further the cheque is being used for a fanciful amount.

5.I heard Mr.Bharatha Chakravarthy for M/s.Sai Bharath & Elan, learned counsel for the petitioner and there was no representation on behalf of respondent and perused the documents available on record.

6.At the outset it is needless to say that scope of power under Section 482 of Code of Criminal Procedure as reiterated by the Hon'ble Apex Court is that it is to be exercised cautiously and sparingly for quashing the criminal proceedings, when the allegations made in the complaint do not constitute an offence or if such proceeding is an abuse of process of Court.

7.Coming to the case on hand the allegations in the complaint are found specific that the cheque issued by the petitioner has been presented for encashment was dishonored. Admittedly a statutory notice revealed to be issued by the complainant, in such a case Section 138 of the Negotiable Instruments Act creates a legal fiction for commission of an offence. Mere issuance of cheque in favour of the Respondent is sufficient to hold that the accused owes liability. It is for the accused to rebut the presumption under Section 139 of the N.I. Act by adducing evidence in the course of Trial.

8.On a perusal of the complaint, it prima facie discloses ingredients for an offence under Section 138 of the Negotiable

Instruments Act and at this stage the only question for consideration would be as to whether continuance of the proceedings would be an abuse of process of law, in the light of the allegations made in the complaint and the sworn statement of the complainant.

9.Law creates a statutory presumption of debt or liability in favour of person in whose favour a cheque is issued and the same is rebuttable by the drawer of cheque only at the time of trial by leading evidence. Under the said circumstance the impugned complaint cannot be quashed at this stage.

10.As far as the other contentions of the petitioner is concerned it is obvious and needless to say that all the contentions involve disputed question of fact, which cannot be considered by this Court while exercising its inherent powers under Section 482 Cr.P.C.

11.In view of the above legal proposition and factual matrix involved in the case,

(a) this Criminal Original Petition fails and the same is hereby dismissed;

(b) the learned Judicial Magistrate No.I, Tiruppur, is directed to dispose the complaint in STC.No.3330 of 2010, within a period of six months uninfluencing the averments made in this order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vs

To

The Judicial Magistrate No.1,
Tiruppur.

Cr1.O.P No.1442 of 2011
and
M.P.Nos.1 and 2 of 2011

aa17/01/2018