IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2018

CORAM:
THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH
Crl.O.P.No.16261 of 2018

M.L.Damotharan : Petitioner/ Accused

Vs.

M.L.Gopi : Respondent/ Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the records and quash the entire proceedings pending in C.C.No.815 of 2017 on the file of the learned IV FTC Metropolitan Magistrate, George Town, Chennai.

For Petitioner : Mr.C.M.Gunasekaran
For Respondent : Mr.T.K.S.Gandhi

ORDER

This petition has been filed seeking to quash the proceedings in C.C.No.815 of 2017, pending on the file of the IV Fast Track Court, Metropolitan Magistrate, George Town, Chennai.

2.The petitioner is an accused in a complaint filed by the respondent for an offence under Section 138 of Negotiable Instrument Act.

3.The learned counsel for the petitioner would submit that in the complaint, a specific averment has been made as if the petitioner owed a sum of Rs.30,00,000/- to the respondent towards the respondent releasing his 1/3rd share in the property. Towards this liability, the cheque is said to have been given by the petitioner. The learned counsel for the petitioner also brought to the notice of this Court the alleged release deed and submitted that there is absolutely no mention about the payment of any consideration in the release deed dated 24.11.2014 and the release itself has been done out of love and affection. The learned counsel for the petitioner also brought to the notice of this Court, the statutory notice issued by the respondent, wherein, the respondent does not mention anything about the release deed and it has been merely mentioned as an amount owed towards the transaction. Pointing out to all these documents, the learned counsel for the petitioner would submit that there is no existence of legally enforceable debt or liability in this case. Therefore, the learned counsel would submit that the proceedings are liable to be quashed by this Court.

4.Per contra, the learned counsel for the respondent would submit that the petitioner is the brother of the respondent and the respondent released his share in the property with a clear understanding that the petitioner will pay a sum of Rs.30,00,000/- to the respondent towards the 1/3rd share. Since the amount was not paid by the petitioner, the respondent insisted for the payment and the petitioner issued three cheques in favour of the respondent totally for a sum of Rs.30,00,000/-. The learned counsel would further submit that when the cheques were deposited they were dishonored on the ground of insufficient funds and therefore, the statutory notice was issued by the respondent to the petitioner. The petitioner inspite of receipt of the notice did not respond to the statutory notice. Thereafter, the complaint was filed. The learned counsel for the respondent further submitted that the grounds raised by the petitioner has to be canvassed only before the Court below in the course of trial and this Court should not interfere with the proceedings at this stage.

5.The important ground, which has been argued before this court is that there was no legally enforceable debt or liability in this case and therefore, the very complaint filed under Section 138 of Negotiable Instrument Act is not maintainable. The respondent has claimed in the complaint that an amount of Rs.30,00,000/- was owed by the petitioner to the respondent towards the release of his share in the property. This is the specific stand that has been taken by the respondent in the complaint. Therefore, necessarily the respondent has to stand or fall on that ground. A cursory reading of the release deed shows that there was no such consideration contemplated for the release of 1/3rd share in the property. If at all, there is a consideration involved for the release of the share, the release deed itself should have provided for the same. Now, the respondent wants to establish a case beyond the terms of a registered document.

6.The attempt that is now being made by the respondent is clearly barred under Section 91 and 92 of the evidence Act. Where the terms of contract or a grant or any other disposition of property has been reduced to the form of a document and is required by law to be registered, no evidence shall be given in proof of the terms of such a document, except the document itself and no oral evidence can be permitted to be given in contravention of the terms of the written document.

7.In this case, the respondent's claim is purely based on release deed. Therefore, the release deed itself should have provided for the consideration. Admittedly, no such consideration has been specified in the release deed. Now, the respondent wants to give evidence based on the release deed and built up his case as if the petitioner should pay a sum of Rs.30,00,000/- towards the release of 1/3rd share in the property. This is a impermissible in law.

8.It is also important to take note of the statutory notice issued in this case. The statutory notice is silent with regard to the nature of transaction. The statutory notice merely says that the petitioner owed a sum of Rs.30,00,000/- towards a transaction. The statutory notice was completely silent about the release deed.

9.Looking at the case from any angle, this Court is of the considered view that there was no legal enforceable debt or liability on the part of the petitioner when the alleged cheque is said to have been executed in favour of the respondent. When the prime requirements for filing the compliant itself is non-existant, no purpose will be served by keeping the complaint pending and the same will amount to abuse of process of Court.

10.In the result, the proceedings in C.C.No.815 of 2017 on the file of the learned IV Fast Track Court, Metropolitan Magistrate, George Town, Chennai is quashed. Accordingly, this Criminal Original Petition is allowed.

Sd/-
Assistant Registrar(Ccc)

//True Copy//

Sub Assistant Registrar

vsg1/gsp

To
The learned IV Judge,Fast Track Court,
Metropolitan Magistrate,
George Town, Chennai.

+1cc to Mr.C.M.Gunasekaran , Advocate SR.No. 79721
+1cc to Mr.T.K.S.Gandhi , Advocate SR.No. 80330

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ASK(11/12/2018)