

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2018

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

Crl.O.P. No.30220 of 2013
and
M.P. Nos.1 & 2 of 2013

P.Krishnamoorthy ... Petitioner

Vs.

Raman ... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records on the file of the Judicial Magistrate No.II, Poonamallee in S.T.C. No.117 of 2013 and quash the same.

For Petitioner : Mr.N.Kirubanandam

For Respondent : Mr.S.Ganesh

ORDER

The petitioner is the accused the S.T.C. No.117 of 2013 on the file of the learned Judicial Magistrate II, Poonamallee. The respondent/complainant filed a private complaint before the Judicial Magistrate No.II, Poonamallee under Section 200 Cr.P.C. against the petitioner herein for an offence punishable under Section 138 of the Negotiable Instruments Act.

2.The case of the respondent/complainant is that the petitioner herein purchased Buttons, D. Ring, Lace, Zip and other garment accessories worth about Rs.1,00,000/- (Rupees One Lakh only) from him on various dates and issued a cheque bearing No.238802 dated 12.01.2013 drawn on Central Bank of India, Chennai- 8. When the cheque was presented for encashment by the respondent/complainant through his bankers viz., State Bank of India, Koyambedu Branch on 02.04.2013, the Cheque was returned on 04.04.2013 for the reason "insufficient funds". Therefore, the respondent/complainant issued a statutory notice through his counsel on 03.05.2013. The petitioner received the said notice and sent a reply dated 29.05.2013, which according to the respondent/complainant contained false allegations. He therefore, filed the private complaint before the learned

Judicial Magistrate No.II, Poonamallee in S.T.C. No.117 of 2013.

3.The contention of the petitioner is that he has filed an insolvency proceedings in I.P. No.3 of 2013 before the Sub Court, Poonamalle and the same is pending. According to the petitioner since there is a prohibition to initiate any legal proceedings against the debtor/petitioner without the leave of the Court, where the insolvency proceedings are pending as per Section 28 (2) of the Provincial Insolvency Act, 1920, the respondent/complainant cannot initiate proceedings under Section 138 of the Negotiable Instruments Act. The learned Counsel appearing for the petitioner drew the attention of this Court to Section 28 of the Provisional Insolvency Act, 1920, which reads as under:

"28.Effect of an order of adjudication-(1) on the making of an order of adjudication, the insolvent shall aid to the utmost of his power in the realization of his property and the distribution of the proceeds among his creditors.

(2) On the making of an order of adjudication, the whole of the property of the insolvent shall vest in the Court or in a Receiver as hereinafter provided, and shall become divisible among the creditors, and thereafter, except as provided by this Act, no creditor to whom the insolvent is indebted in respect of any debt provable under this Act, shall during the pendency of the insolvency proceedings have any remedy against the property of the insolvent in respect of the debt, or commence any suit or other legal proceedings except with the leave of the Court and on such terms as the Court may impose."

His specific contention is that the legal proceedings mentioned in Section 28 (2) of the Provisional Insolvency Act, 1920, includes the proceedings initiated under Section 138 of the Negotiable Instruments Act.

4. Per contra, the learned counsel appearing for the respondent contended that the criminal proceedings are totally different from civil proceedings and initiation of criminal proceedings under Section 138 of the Negotiable Instruments Act, cannot be quashed merely because the petitioner herein had filed insolvency proceedings in I.P. No. 3 of 2013, before the Sub Court, Poonamallee. Reliance was placed on the following decisions (1). Mehar Banu v. N.Justin, reported in 2001 (2) MWN (Cr).DCC Page No.64, (2). B. Kannan V. B.C. Santhanam, reported in 1999 CrI. L.J. Page.2236. In both the above

decisions, it has been clearly laid down that there is no prohibition either in the Insolvency Act or in the Negotiable Instruments Act for the complainant to approach the criminal Court to take penal action against the accused for the offences already committed under Section 138 of the Negotiable Instruments Act, merely because the Insolvency Proceedings are pending or even he was declared as an insolvent. It is further held that protection given under Sections 29 and 31 of the Provisional Insolvency Act is extended to the debtor in respect of civil detention and civil arrest alone and it would not cover the proceedings under Section 138 of the Negotiable Instruments Act. It is pertinent to point out that the words in Section 17 of the Presidency Towns Insolvency Act for "any suit or other legal proceedings" would mean proceedings relating to property and not to personal commitment made by the petitioner. Similarly, the wordings in Section 18 (1) of the Presidency Towns Insolvency Act "any suit or other proceeding pending against the insolvent before any Judge or Judges of the Court or in any other Court subject to the superintendence of the Court" would mean only civil proceedings and not criminal proceedings as criminal cases are not subject to superintendence of the Insolvency Act.

5. In the facts and circumstances of the present case, I do not find any reason to quash the proceedings as prayed for by the petitioner and accordingly this petition is dismissed. Consequently, connected miscellaneous petitions are also closed. Since S.T.C.117 of 2013 is of the year 2013, the learned Judicial Magistrate No.II, Poonamallee is directed to dispose of the case within three months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

rkp
To

1. The Judicial Magistrate No. II, Poonamallee
2. The Public Prosecutor, Madras High Court,
Madras.

+1cc to Mr.S.GANESH, Advocate, S.R.No.36702

CrI.O.P. No.30220 of 2013
and M.P. Nos.1 & 2 of 2013

RK(CO)
TR(29/06/2018)