

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2018

CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

Cr1.O.P.No.428 of 2013

and

M.P.Nos.1 and 2 of 2013

K.Kumaravel

... Petitioner

Vs.

Masilamani

... Respondent

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records pertaining to the case in S.T.C.No.1501/2012 on the file of the Judicial Magistrate Court, Pennagaram, Dharmapuri District and quash the same.

For Petitioner : Mr.I.C.Vasudevan

For Respondent : Mr.A.R.Suresh

O R D E R

This Criminal Original Petition has been filed by the accused to quash the proceedings in S.T.C.No.1501 of 2012 on the file of the Judicial Magistrate Court, Pennagaram, Dharmapuri District.

2. The learned Counsel for the petitioner has submitted that the respondent herein has filed a complaint stating that the petitioner herein has committed an offence under Section 138 of the Negotiable Instruments Act. He further submitted that the cheque in question has been issued by the petitioner herein as mandate holder and the said fact also has been mentioned by the respondent in the statutory notice. He further submitted that, since it is the admitted case of the respondent that the petitioner herein has issued a cheque only as mandate holder, he cannot be prosecuted for the offence under Section 138 of the Negotiable Instruments Act. In support of the said contention, he relied upon the following decisions:

- 1.Ravi Chandran Vs Subramanian (2006) BC 54.
- 2.N.Gopalan Vs K.Udhayakumar 2009 (4) CTC 217.
- 3.Jugesh Sehgal Vs. Shamsher Singh Gogi, (2009) 14 SCC 683.

3. The learned Counsel for the respondent has submitted that in the cheque issued by the petitioner herein, it is mentioned as Proprietor / Mandate holder. He further submitted that the respondent, without knowing the status of the petitioner herein as to whether he is a Proprietor or Mandate Holder, has issued a statutory notice, stating that the petitioner herein is the Mandate Holder, however, in the said notice, he has clearly stated that the petitioner herein only has borrowed the amount of Rs.5,00,000/- (Rupees Five Lakhs only) from the respondent herein. He further submitted that in the complaint also, it is clearly stated that the petitioner herein has borrowed a sum of Rs.5,00,000/- (Rupees Five Lakhs only) for development of Sri Bagavathi Amman Cotton Mills and he has issued a Cheque for Rs.5,00,000/- (Rupees Five Lakhs only). He further submitted that when the said cheque was presented for encashment which was returned on the ground that the account was closed on 17.08.2012. He further submitted that after issuing statutory notice, the respondent herein has filed a complaint before the Judicial Magistrate Court, Pennagaram, Dharmapuri District and based on the said complaint, the case was taken on file in S.T.C.No.1501 of 2012.

4. He further submitted that since in the reply notice, the petitioner herein has not disclosed whether he issued the said cheque as Proprietor of the said company or mandate holder, the respondent has filed the complaint without mentioning that the petitioner herein is the mandate holder. He further submitted that whether the petitioner is the proprietor or the mandate holder has to be decided only after taking evidence and therefore, he requests to dismiss the petition.

5. In the typed set filed by the petitioner, a xerox copy of the cheque has been enclosed. In the said cheque, it is mentioned that it was issued on behalf of Sri Bagavathi Amman Cotton Mills by Proprietor / Mandate Holder. Since both the words viz., Proprietor / Mandate holder were mentioned, it appears that the complainant has sent a statutory notice stating that the petitioner herein is a mandate holder. In the reply notice, the petitioner has not specifically stated that he has issued the said cheque either as Proprietor or Mandate holder. On the contrary, he simply denied the allegations made in the statutory notice. So, it appears that in the complaint, the respondent herein has omitted to mention the petitioner herein as mandate holder.

6. As per Section 31 of the Indian Evidence Act, Admissions are not conclusive proof of the matters admitted. So, the respondent is entitled to adduce evidence to show that what he has stated in the statutory notice is not correct. During trial, the respondent can summon the relevant records from the

Bank and prove that the petitioner has maintained account or not. Likewise, the petitioner herein also can summon the relevant records from the Bank and prove that he acted only as a mandate holder and not as Proprietor.

7. In Ravi Chandran Vs Subramanian (supra), this Court has held that the accused is only a mandate holder, who was authorised to sign on behalf of the account holder and hence he cannot be prosecuted for the offence under Section 138 of the Negotiable Instruments Act.

8. In N.Gopalan Vs. K.Udhayakumar (supra), also the accused was only a mandate holder. Hence this Court has held that the cannot be prosecuted for the offence under Section 138 of the Negotiable Instruments Act.

9. In Sugesh Sehgal Vs. Shamsher Singh Gogi (supra), the accused issued the cheque from an account not maintained by him, but by one Ms.Shilpa Chaudhary. After came to know the said fact, the complainant has lodged a complaint before the police and FIR has been registered under Sections 420, 467, 468, 471 and 406 IPC. Under the said circumstances, the Hon'ble Supreme Court has held that the Section 138 of the Negotiable Instruments Act will not attract.

10. In the present case, as already pointed out that in the cheque both the words viz., Proprietor / Mandate holder are found. In the reply notice, the petitioner herein has not specifically stated that he issued the said cheque either as mandate holder or Proprietor. Only after taking evidence, it can be decided that whether the petitioner herein has issued the cheque as mandate holder or Proprietor. Therefore, the aforesaid decisions cannot be applied at this stage. Therefore, this Court is of the view that this petition is not maintainable and the same is liable to be dismissed.

11. In the result, this Criminal Original Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed. The Learned Judicial Magistrate is directed to dispose of the case uninfluenced by the observations made by this court.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate,
Pennagaram,
Dharmapuri.

2.The Public Prosecutor,
Madras High Court,
Chennai.

+1cc to Mr.A.R.Suresh, Advocate, S.R.No.58142

+1cc to Mr.I.C.Vasudevan, Advocate, S.R.No.57980

Crl.O.P.No.428 of 2013
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GSP(12/09/2018)



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