

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 19.07.2018

CORAM
THE HONOURABLE Mr.JUSTICE M. NIRMAL KUMAR

Crl.O.P.No.28108 of 2011
and
M.P.No.1 of 2011

V.Selvaraj,

... Petitioner/Accused

Versus

C.Vijayakumar, Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the Complaint in S.T.C.No.4295 of 2011 on the file of the Judicial Magistrate Court No.1, Tirupur lodged by the respondent herein and quash the complaint by allowing this quash petition.

For Petitioner : Mr.R.Marudhachalamurthy

For Respondent : Mr.V.Nicholas

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O R D E R

This Criminal Original Petition is filed to call for the records pertaining to the Complaint in S.T.C.No.4295 of 2011 on the file of the Judicial Magistrate Court No.1, Tiruppur lodged by the respondent herein and quash the complaint by allowing this quash petition.

2.The petitioner herein is the accused in a case filed by the respondent/complainant for the offence under Section 138 of Negotiable Instruments Act, which is pending trial in S.T.C.No.4295 of 2011 on the file of the Judicial Magistrate Court No.1, Tiruppur.

3.The contention of the learned counsel for the petitioner is that the petitioner is a proprietor of M/s. Sangamithra and doing cloth merchant business, the respondent proprietor of M/s. Vignesh Impex and doing business of manufacturing knitted hosiery garments, they had business relationship between them. In the course of business, there were several transactions between them, for one such circumstances, the accused had issued a cheque bearing No.531316 dated 24.02.2011 for a sum of

Rs.2,00,000/- (Rupees two lakhs only) drawn on Syndicate Bank, SSI Branch, Coimbatore. Due to some reason the cheque could not be paid on that day and hence, for the payment of this cheque, and for another payment the accused had made payment by RTGS of Rs.3,00,000/- (Rupees Three lakh only) to the respondent on 08.03.2011 and thereafter, the respondent gave a statement dated 02.05.2011 in his letterhead in which he has specifically mentioned about the receipt of the payment of Rs.2,00,000/- for the cheque bearing No.531316. Hence, the liability has been discharged by the payment through RTGS which has been confirmed by the respondent.

4.The respondent without handing over the cheque used the same and filed the case before the Lower Court. Hence, the petitioner prayed for quashing of the complaint. Further in the typed set of papers the letter of the respondent dated 05.02.2011, statement of accounts, legal notice and reply notice sent by him were filed.

5.Per contra, the learned counsel for the respondent admits that the petitioner and the respondent had business relationship and they have been doing business, further stated that the petitioner purchased knitted garments from the respondent and the petitioner has running account with the respondent. The petitioner has to pay a sum of Rs.18,30,963/- as on 24.02.2011 and on repeated reminder of the respondent, the petitioner to settle the amount in discharge of his debt issued the cheque bearing No.531316 dated 24.02.2011 for a sum of Rs.2,00,000/- drawn on Syndicate Bank, was issued. Though, the cheque was issued on 24.02.2011, the petitioner requested the respondent not to deposit the cheque. The cheque in issue was deposited for encashment, which was returned for the reason "Payment stopped" for which the statutory notice was issued by the respondent on 11.08.2011. Though, the petitioner sent a reply dated 24.08.2011 with false allegations, the reply was ignored. Thereafter, on complying the statutory provisions, the complaint has been filed, further, he disputed the writing of the letter dated 02.05.2011 and contended that once the letter has been disputed only way out for the petitioner is to face the trial and disprove his case.

5.On considering the rival submission and on perusal of the complaint and the documents, it is seen that the contentions raised by the petitioner had been stated in his reply notice dated 24.08.2011. Immediately, on receipt of the statutory notice the petitioner had given his reply giving the details of payment made to the respondent. Further, all the payments have been made through bank, fortifying the same, the statement of his bank account, which reflecting the payment made to the respondent as mentioned in the reply notice. When a specific query was raised to the complainant with regard to the

genuineness of the letter pad. The respondent replied that the letter pad belongs to the respondent/complainant. It could be seen that the particulars found in the account statement dated 02.05.2011 of the respondent a due of Rs.12,58,626/- has been shown and after adjusting for the yarn and fabrics and their transaction between them which comes to the total of Rs.4,96,985/-. There is a balance amount of Rs.7,61,641/- which amount has been paid on 11.05.2011 and 13.06.2011. As it could be seen from the statement of account which further fortifies the genuineness of the letter and the accounts statement dated 02.05.2011.

6.In such circumstances, upon the payment of Rs.2,00,000/- through RTGS on 08.03.2011 which is the amount in question for the cheque No.531316 of Syndicate Bank, Coimbatore dated 24.02.2011. Liability with regard to the above cheque has been discharged by the petitioner. No doubt, in business between them, there might be other issues which is not of the concern now. The liability of the cheque amount having discharged the proceedings against the petitioner is an abuse of process of law.

7.Hence, this Criminal Original Petition is allowed and the case pending before the Lower Court is hereby quashed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.1,
Tiruppur.

2.Do through Chief Judicial Magistrate,
Tiruppur.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Marudhachalamurthy, Advocate, S.R.No.48599

Cr1.O.P.No.28108 of 2011

MG(CO)
rrs 16/11/2018