

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.08.2018
Pronounced on : 23.08.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.9017 of 2011
and
M.P.Nos.1 & 2 of 2011

K.Louis,
S/o.Kuzhandaisamy,
Proprietor,
Annai Glori Offset Printers,
No.16, Lenin Street,
Kosapalayam,
Pondicherry - 13. ... Petitioner/Accused

Vs.

Arulmarie,
W/o.Michael. ... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the entire records in Calender Case No.78 of 2009 pending on the file of the Judicial Magistrate Court No.I, Puducherry and to quash all the further proceedings.

For Petitioner : No appearance

For Respondent : Mr.K.Thilageswaran

O R D E R

This Criminal Original Petition is filed to call for the entire records in Calender Case No.78 of 2009 pending on the file of the Judicial Magistrate Court No.I, Puducherry and to quash all the further proceedings.

2.The petitioner, who is an accused in C.C.No.78 of 2009, which is pending trial on the file of the Judicial Magistrate Court No.I, Puducherry, for the offence under Section 138 of the Negotiable Instruments Act filed by the respondent, who is the complainant in the Lower Court.

3.The contention of the petitioner is that the petitioner is running a offset printer in the name and style of M/s. Anna Glori Offset Printers and the husband of the respondent namely Michael is working as a Government School Teacher, who used to visit the petitioner's offset press for printing purpose and developed close friendship with the petitioner.

4.Further, the said Michael had also invested money to an extent of Rs.50,000/- (Rupees fifty thousand only) to the petitioner's business, prior to five years and the same was settled to the petitioner. Periodically the respondent's husband making payment to the petitioner, so far for the tune of Rs.4,00,000/- (Rupees Four lakhs only) has been paid to the petitioner.

5.The petitioner's contention is that the respondent's husband spend his money lavishly and for the same he borrowed money from various financiers regularly and the blank cheques of the petitioner was given as security which were obtained from the petitioner by the husband of the respondent stating that he is a Government servant and he cannot borrow money from private lenders and one of the blank cheque of the petitioner was used by the creditors of the respondent's husband and proceedings under Section 138 has been initiated against the petitioner. Thereafter, a big quarrel between the petitioner and the respondent's husband arose, following which the respondent's husband unfairly demanded to return his amount of Rs.50,000/-, which was already settled by the petitioner.

6.The petitioner had also given a criminal complaint to Orleanpet, Police Station, Puducherry against the respondent's husband and the police on enquiry have not taken any action have closed the case as "Civil in nature". The husband of the respondent taking revenge of the above dispute and just to escape from the lawful action had misused the one of the petitioner's blank cheque bearing No.003355 of Catholic Syrian Bank Limited, Puducherry and had initiated the criminal proceedings under Section 138 of the Negotiable Instruments Act in C.C.No.250 of 2008.

7.The petitioner received summons from the learned Judicial Magistrate No.I, Puducherry and appeared on 29.05.2008, thereafter, the case was adjourned for two hearings and on the third hearing date the case was not called till evening and on the petitioner's enquiry, the Bench Clerk of the Judicial

Magistrate Court No.I, Puducherry informed that the C.C.No.250 of 2008 has been closed. After two years, he had received summons from the Judicial Magistrate Court No.I, Puducherry for another criminal proceedings in C.C.No.78 of 2009, which is also initiated based on the same cheque bearing No.003355 of Catholic Syrian Bank Limited, Puducherry. Aggrieved against the act of the learned Judicial Magistrate No.I, Puducherry, taking cognizance twice on the same criminal complaint based on the same cheque bearing No.003355 having no valid reason, had filed the above quash petition.

8.The further contention of the petitioner is that the learned Judicial Magistrate Court No.I, Puducherry, after dropping the criminal proceedings in C.C.No.250 of 2008 and subsequently second time taking cognizance in C.C.No.78 of 2009 is un-lawful.

9.The learned counsel for the respondent had submitted that the petitioner/accused had filed the above quash petition to protract and prolong the proceedings, which is to be dismissed in limine. The petitioner had made to appear that the cheque bearing No.003355 of the Catholic Syrian Bank, Puducherry, cognizance were taken in two calendar case Nos. in 250 of 2008 and 78 of 2009 by the learned Judicial Magistrate Court No.I, Puducherry is not correct.

10.This Court had called for the records from the Lower Court and on perusal of the same, it is seen that the complaint in the above case came to be filed on 24.04.2008 and thereafter, periodical adjournments were given. On 22.01.2009, sworn statement was recorded and the complaint was taken on file for the offence under Section 138 r/w 142 of the Negotiable Instruments Act and summons was ordered to be taken to the accused on payment of process and the case was adjourned to 05.03.2009. Thereafter, on receipt of the summons in C.C.No.78 of 2009 the accused had appeared before the Lower Court, on 16.04.2010 and on questioning the accused the case was posted for trial on 18.06.2010 and on 01.12.2010, the evidence of the complainant was closed and Ex.P1 to P6 have been marked.

11.At this stage, the petitioner/accused had approached this Court and had obtained stay. For the same case the accused had received summons from the learned Judicial Magistrate No.I, Puducherry in C.C.No.250 of 2008, though, the petitioner was initially projecting the case before this Court for one cause of action, Court Below has taken cognizance in C.C.No.250 of 2008 and again in C.C.No.78 of 2009 is on a misconception.

12.The respondent/complainant denied the averments and stated that he had filed only one case against the petitioner/accused and on perusal of the complaint, it is seen that the contention of the petitioner/accused is on a mirage and not sustainable either in law or on facts. Several reports have been sent from the Lower Court to this Court on the query of status of the closure of the case in C.C.No.250 of 2008. By report dated 17.08.2017, the learned Chief Judicial Magistrate, Puducherry had submitted that the respondent/complainant had preferred a complaint against the petitioner/accused which is numbered as C.C.No.78 of 2009 on the file of the Judicial Magistrate Court No.I, Puducherry, which was subsequently transferred to the file of the Judicial Magistrate Court No.IV, Puducherry on the point of jurisdiction on 20.09.2016 and it is now pending trial in S.T.C.No.1631 of 2016 before Judicial Magistrate No.IV, Puducherry.

13.It is very clear from the seal of the Lower Court and from the adjudication the complaint has been filed on 24.04.2008, for which the Court seal endorsement of the Judicial Magistrate Court No.I, Puducherry is found and the case being adjourned regularly. From the adjudication dated 22.01.2009, it is found that the complainant is present, sworn statement recorded, records perused and after satisfaction the complaint has been taken on file under Section 138 r/w 142 of the Negotiable Instruments Act and issued summons to the accused and posted the case to 05.03.2009. Thereafter, the case has been periodically adjourned for service of summons, finally, the accused had appeared before the Trial Court namely the Judicial Magistrate Court No.I, Puducherry, as it could be seen by the adjudication dated 16.04.2010 and the case thereafter periodically adjourned for trial and finally, the evidence of the complainant was recorded by way of proof affidavit on 01.12.2010 and Ex.P1 to P6 have been marked. Thereafter, the petitioner had filed the above quash petition on 08.04.2011 due to which the trial is pending. In the meanwhile, the records have been called for and the trial in C.C.No.78 of 2009 had been successfully put on hold for the past seven years.

14.The learned counsel for the petitioner sensing that this Court is not accepting the contention of the petitioner, though initially appeared and made his submissions, thereafter, failed to appear before this Court, on subsequent dates despite the name of the petitioner being printed in the cause list.

15. On the above factual background, the contention of the petitioner does not merit any consideration and the quash petition is dismissed, since the matter is pending from the year 2011, without any progress and the Trial has reached a penultimate stage. The Trial Court is directed to conclude the trial, within a period of three months from the date of receipt of the copy of this order and report compliance. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS V)

//True Copy//

Sub Assistant Registrar

ah
To

1. The Judicial Magistrate No. I,
Puducherry.

2. The Section Officer,
Criminal Section,
High Court, Madras.
(to send back the case records
immediately to the Trial Court)

+1cc to Mr. K. Thilageswran, Advocate Sr. 44411

Cr1.O.P.No.9017 of 2011

ak[co]
srg 11/09/2018

WEB COPY