IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.06.2018

PRONOUNCED ON : 05.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.13958 OF 2010
AND
M.P.NO.1 OF 2010

1.Ashok Kumar,
S/o.Late Duraisamy.

2.V.L.Narayanasamy,
S/o.V.K.Lakshmipathy.

3.V.M.D.Gnanavadivel Vijayarajah,
S/o.Duraisamy. ... Petitioners/Accused

Vs.

V.Gopinath,
S/o.G.Venkatachalam Naidu. ...Respondent/Complainant

PRAYER:
Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.137 of 2010 pending on the file of the Judicial Magistrate Court-VI, Coimbatore and quash the same.

For Petitioners: Mr.N.R.Elango, Senior Counsel for Mr.R.Vivekanandhan

For Respondent : Mr.K.Raju

O R D E R

This Criminal Original Petition is filed to call for the records in C.C.No.137 of 2010 pending on the file of the Judicial Magistrate Court-VI, Coimbatore and quash the same.

2.The petitioners herein have filed the above Quash petition, who are accused in C.C.No.137 of 2010 on the private complaint filed by the respondent/complainant pending on the file of the Judicial Magistrate Court-VI, Coimbatore for the offences under Sections 406, 467 and 471 IPC.

3.The contention of the learned counsel for the respondent is that the respondent used to recommend certain third parties to the father of the 1st petitioner, Duraisamy, who was a money lender and used to advance loans to the third parties, for which the respondent stood as guarantor, for which he gave some unfilled signed blank cheques, inchoate pronotes and unfilled blank papers. In one such transaction, the complainant had executed seven promissory notes for a sum of Rs.50,000/- in favour of the 1st petitioner's father and issued two cheques bearing No.184323 and 184305 on 13-11-1997, one cheque for a sum of Rs.50,000/- and another blank cheque drawn on SBI, Coimbatore in favour of the 1st petitioner's father.

4.The further case of the respondent is that the respondent issued four blank cheques bearing Nos. 713676 to 713679 on 13-04-1999 drawn on SBI, Sri Ramakrishjna Vidyalaya branch, Coimbatore to the father of the 1st petitioner, as a guarantee. The blank cheques issued by the respondent to the father of the 1st petitioner are security for the 3rd parties loans. These third parties had paid back the money and the cheques were not returned, since the father of the 1st petitioner had expired on 22-10-2004, the respondent was trying to get back the cheques but of no avail. Thereafter, the respondent had instructed his bankers to stop payment for these four cheques.

5.The 1st petitioner with ill motive to extract money had filled up the blank cheque bearing No.713676 for a sum of Rs.5,39,000/- and presented for encashment as the cheque got dishonoured the 1st petitioner had filed a case under Section 138 of the Negotiable Instruments Act against the respondent in C.C.No.166 of 2006 on the file of the Judicial Magistrate Court VI, Coimbatore. Further, the 1st petitioner, who was in illegal possession of cheques handed over a cheque No.713677 to the 2nd petitioner, who had presented the same and as the cheque was dishonoured he had filed a private complaint under Section 138 of the Negotiable Instruments Act against the respondent in C.C.No.74 of 2008, which was pending on the file of Judicial Magistrate Court No.1 Dindigul. Later it was transferred to the file of Judicial Magistrate Court-VI, Coimbatore and numbered as C.C.No.71 of 2009. The 3rd petitioner, who had received a cheque from the 1st petitioner bearing No.713679 had presented the same in Pollachi and as the cheque got dishonored he issued a legal notice dated 16-10-2008 to the respondent.

6.The contention of the learned counsel for the petitioners is that it is an admitted case of the respondent that cheques were entrusted to the 1st petitioner's father and hence, there is no question of committing criminal breach of trust. Hence, no offence under Section 406 is made out. Likewise, none of the documents were forged by the petitioners and the respondent had admitted in the complaint that the cheques were duly signed by him and hence, no offence under Sections 467 IPC and 471 IPC is made out.

7.Further, the learned counsel for the petitioners submit that as the petitioners had filed a private complaint against the respondent for the offence under Section 138 of the Negotiable Instruments Act. The respondent as a counter blast and to create a defence has filed the above private complaint against the petitioners and hence, the petitioners seek to quash the private complaint in C.C.No.137 of 2010.

8.The learned counsel appearing for the petitioners are relying upon the following citations:- SUNIL KUMAR VS. ESCORT YAMAHA MOTORS LTD., reported in (1999) 8 SCC 468; EICHER TRACTORS LTD. ,AND ANOTHER VS. HARIHAR SINGH AND ANOTHER reported in (2008) 16 SCC Cases 763; and MAHENDRA AND MAHINDRA FINANCIAL SERVICE LTD., VS. RAJIV DHUBEY reported in (2009)1 SCC 706.

9.The learned counsel for the respondent vehemently opposed the contention of the learned counsel for the petitioners stating that the 1st petitioner's father (late) Duraisamy came into contact with the respondent in the year 1989. The respondent had introduced the 3rd parties for the money lending done by the said late Duraisamy during the year 1996-97 in which year Pronotes and cheques were handed over.

10.Further, during 1999 the respondent had handed over four unfilled signed cheques as security for financing one R.Selvaraj. He further states that as the pronotes expired they were renewed during 1999 upto 2002. Except for the loan of Selvaraj, other loans were cleared and the said Selvaraj was directly dealing with the late V.Duraisamy and he had also pledged his property. The late Duraisamy had informed the said Selvaraj that the cheques were misplaced and assured to return once found. Hence on 17-07-2003, stop payment for the four cheques was given to the bank by the respondent.

11.On 22-07-2004, the 1st petitioner's father Duraisamy expired and on 25-04-2005, 138 statutory notice was issued on behalf of the 1st petitioner to the respondent for cheque No.713676 for which on 12-05-2005, reply notice was issued by the respondent. Likewise, on 20-8-2007, the 2nd petitioner had issued a notice for cheque No.713677 and the respondent had issued reply dated 27-8-2007. On 16-10-2008, the 3rd petitioner had issued a notice for cheque No.713679, for which a reply was sent by the respondent. As the respondent sensed foul play and misuse of the cheques by the petitioners, he had preferred a complaint to the Inspector of Police, Periyianaickenpalayam, Coimbatore, Commissioner of Police, Coimbatore and to C.M. Cell against the petitioners.

12.It is further submitted that the 1st petitioner threatened the respondent that the remaining blank cheque No.713678 would be presented in a bank in other state which would further cause harassment to the petitioner which made the respondent to file the private complaint against the petitioners. The respondent had filed a typed set and had reiterated that what are all stated in the private complaint and had contended that the lower Court on examination of the respondent and one R.Selvaraj and coming to conclusion that prima facie offence is made out had taken the complaint on file against the petitioners and it needs no interference.

13.The learned counsel for the respondent had relied upon a Citation reported in (2006)6 SCC Cases 736 in the case of Indian Oil Corporation Vs. NEPC India Ltd., and others in support of his case.

14.On perusal of the complaint and the statement of the respondent and the said R.Selvaraj, it is seen that upto June 2002 the Pronotes have been revalidated and the said Pronotes have been produced in the 138 case by the 1st petitioner. It is also to be noted though the respondent had given a stop payment for the 4 cheques bearing Nos.713676 to 713679 to his bankers on 17-07-2003, mentioning about handing over of 4 cheques to the 1st petitioner’s father late V.Duraisamy Naidu and the liabilities have been discharged. This important contention of the respondent have not been made known to the 1st petitioner’s father till his death on 22-10-2004 or till such time till he received the 138 notices with regard to these cheques. Hence, it leads to inference that the respondent in view to create defence for the 138 case such communication has been created.

15.Further, on going through the statement of the respondent in the above case, it is seen that the respondent had admitted of handing over of signed cheques. He has not produced any documents to show that the loans have been discharged and the cheques have become stale. The writings is without his authority. Entrustment of the cheques have been admitted, as also no averments for forgery is found. In the complaint the respondent states only about cheating.

16.Further, the other witness who had been examined in support of his contention R.Selvaraj in his statement before the Court had stated that he had repaid the loans to the 1st petitioner and had taken a letter stating that there are no dues to him. This letter has not been produced and no reason has been given for the same. Further, it could be seen that the lower court without looking into any of the documents and getting satisfied by order dated 01-03-2010 in M.P.No.7510 of 2009, without any cogent reasoning except for reproducing the statement of respondent and the said Selvaraj and without any basis states that prima facie case has been made out. In view of the same, the cognizance taken by the lower court is perverse.

17.It is not in dispute that proceedings under Section 138 of the Negotiable Instruments Act was pending between the petitioners and the respondent, that being so the question for alleged breach of trust does not arise. In view of admission of the signature and no proof for discharge of the cheque amount has been produced, the contention of forgery and cheating cannot be said to be made out. The responsibility of the magistracy lie in finding out whether the alleged accused could be legally responsible for the offence charged for. The Court at that stage circumspect and by exercising judicious mind by taking all the relevant facts and circumstances into consideration ought to have taken the complaint on file, lest the private compliant would be an instrument of vendetta which the lower court fail to take into account.

18.From the above reading of the complaint as a whole it appears that on consideration of the allegations and in light of the statement made on oath both by the complainant and the other witness ingredients of offences are not made out. Further, from the factual matrix, it could have seen that there have been animosity between the petitioners and the respondent. In such circumstances, mala fides of the respondent has to be looked into. It is apparent that as a counter blast for the proceedings initiated by the petitioners this case has been initiated by the respondent. Hence, necessary ingredients of the offence of cheating or criminal breach of trust have not been made out, on the other hand attendant circumstances indicate that the complaint has been made with an ulterior motive to wreck vengeance in view to spite for the 138 cases initiated by the petitioners against the respondent.

19.The citation referred by the respondent in the facts and circumstances to the case is not relevant.

20.The case in hand squarely falls within the parameters indicated in Bhajanlal case. The factual scenario as noted above clearly shows that the proceedings were initiated as a counter blast to the proceedings initiated by the petitioners. Continuance of such proceedings will be nothing but an abuse of process of law. Hence, Proceedings in C.C.No.137 of 2010 before the learned Judicial Magistrate-VI, Coimbatore stands quashed.

21.Accordingly, the Criminal Original Petition stands allowed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate Court No.VI,
   Coimbatore.

+1cc to Mr.R.Vivekanandhan, Advocate, S.R.No.43505
+1cc to Mr.K.Raju, Advocate, S.R.No.43345

Crl.O.P.No.13958 of 2010

NRI(CO)
CS/19/07/18