

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2018

CORAM

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.No.15355 of 2013
and MP.No.1 of 2013

K.Dayasagar Reddy

... Petitioner/Accused

Vs.

1. K.Bhakthavatsal Reddy,
S/o. Late K.Raghava Reddy.

2. Indian Overseas Bank,
Rep. By its Managing Director,
Anna Salai,
Chennai - 600 002.

...Respondents/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to quash the complaint in C.C.No.3207 of 2012 on the file of the XVII Metropolitan Magistrate, Saidapet seeking to prosecute the petitioner for an offence under Section 138 Negotiable Instruments Act, award costs as against the 1st respondent.

For Petitioner : Mr.V.Prakash,
Senior Advocate
For Mr.R.Gokulraj,
Aparna Ravikumar.

For R1 : Mr.T.Arul

For R2 : Mr.Y.Jyothish Chander

सतयमेव जयते
O R D E R

This petition has been filed by the accused to quash the proceedings in C.C.No.3207 of 2012 on the file of the XVII Metropolitan Magistrate, Saidapet.

2. Mr.V.Prakash, learned senior counsel has submitted that the first respondent is the elder brother of the petitioner and he is aged about 82 years. He further submitted that the first respondent has filed a complaint against the petitioner herein stating that there was a mediation to settle the claim of the complainant and in the said mediation, the matter was compromised and as per the said compromise, the petitioner herein has issued a cheque for Rs.25 Lakhs. He further submitted

that actually no such mediation or settlement arrived between the parties. He further submitted that the first respondent has left the native village in the year 1955 and settled down in Chennai and he further submitted that the first respondent was a photographer connected with a movie industry taking stills and in the year 1971, there was a partition between the petitioner and the first respondent and hence there was no necessity for settlement as alleged. He further submitted that the first respondent herein already filed a suit in O.S.No.9 of 2010 on the file of the District Court, Nellore. He claimed partition for the properties mentioned therein and the said suit was dismissed for non prosecution on 13.03.2012. He further submitted that the petitioner herein has filed a suit in O.S.No.22 of 2011 seeking permanent injunction restraining the respondent herein from interfering with his peaceful possession and enjoyment of the properties and the said suit was decreed as prayed for on 06.12.2012, against which, no appeal has been filed. He further submitted that the petitioner herein never opened bank account in Indian Overseas Bank, Kodambakkam Branch and he never availed any cheque book facility and in particular he has never issued a cheque for Rs.25 lakhs dated 02.07.2012 in favour of the first respondent and therefore, he prayed to quash the proceedings in C.C.No. 3207 of 2012 on the file of the XVII Metropolitan Magistrate, Saidapet.

3. The learned counsel for the first respondent has submitted that the points which are raised by the petitioner have to be decided by the trial Court after taking evidence and therefore, this petition is not maintainable.

4. The learned counsel for the second respondent has submitted that in the dispute between the petitioner and the first respondent, the second respondent has been unnecessarily dragged to the Court and therefore, he prayed to dismiss the petition.

5. The points which now raised by the petitioner are relating to the facts. If already the properties were divided and that there was no mediation between the petitioner and the first respondent, the petitioner herein can very well produce evidence with regard to the said facts before the trial Court. Further, if the alleged cheque was not issued by the petitioner, the said fact also can be proved by adducing evidence. The aforesaid facts cannot be decided in this petition. Therefore, this petition is liable to be dismissed.

6. The learned counsel for the petitioner has submitted that the petitioner is aged about 87 years and he is residing at Nellore District, Andhra Pradesh and it is very difficult for him to attend the trial Court for each and every hearing. Considering his request, the personal appearance of the

petitioner before the trial Court is dispensed with. The petitioner is directed to appear before the trial court as and when required by the trial court.

7. With the aforesaid observations, this petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

msrm

To

1. The learned XVII Metropolitan Magistrate, Saidapet.
2. The Managing Director, Indian Overseas Bank, Anna Salai, Chennai - 600 002.
3. The Public Prosecutor, High Court, Madras.

+1cc to Mr.R.Gokulraj, Advocate, S.R.No.57170
+1cc to Mr.T.Arul, Advocate, S.R.No.57342

Crl.O.P.No.15355 of 2013
and MP.No.1 of 2013

SPD(CO)

rrs 23/10/2018

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