

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2018

CORAM:

THE HON'BLE MRS.JUSTICE R. HEMALATHA

Cr1.O.P.No.157 of 2013
and
M.P.No.1 of 2013

S.Thangaswamy Petitioner/Accused

/Vs/

S.Srinivasan Respondent/Complainant

Prayer: Criminal Original Petition filed under section 482 of Criminal Procedure Code to call for the records pertaining to the C.C.No.9202/2010 on the file of the XVII Metropolitan Magistrate, Saidapet and quash the same.

For Petitioner : Mr.R.Baskar

For Respondent : Mr.S.N.Kirubanandam

ORDER

The petitioner is the accused in C.C.No.9202 of 2012 on the file of the XVII Metropolitan Magistrate at Saidapet, Chennai-15.

2. The respondent/complainant filed a private complaint in C.C.No.9202/2010 under Section 200 of Cr.P.C., before the XVII Metropolitan Magistrate at Saidapet, Chennai, against the petitioner/accused for the offence punishable under Section 138 of the Negotiable Instruments Act. The case of the respondent/complainant is that the complainant's wife and the petitioner entered into an agreement of sale dated 09.08.2009 and the total sale consideration was fixed at Rs.52,00,000/- and that a sum of Rs.10,00,000/- was paid towards advance through a cheque bearing No.260389 dated 09.08.2009, drawn on HDFC Bank. Subsequently, a sum of Rs.20,00,000/- was also paid towards sale consideration. According to him, since the sale transaction could not be materialized, the complainant's wife insisted for return of the advance amount already paid and the accused issued two cheques bearing Nos.000126 and 000129 dated 31.10.2009 and 02.11.2009 respectively drawn on Axis Bank Ltd., Kotturpuram, Branch Chennai, in favour of the complainant. When the respondent/complainant presented the cheques for encashment, the same were dishonoured for the

reason "Funds Insufficient" and therefore, he issued a statutory notice dated 16.01.2010 to the petitioner/accused calling upon him to pay a sum of Rs.30,05,000/- due under the cheques.

3. The contention of the learned counsel for the respondent/complainant is that though the said notice was received by the petitioner/accused as evidenced by the postal acknowledgment card dated 19.01.2010, he did not come forward to make good the payment. Therefore, he filed the private complaint before the XVII Metropolitan Magistrate at Saidapet, Chennai, against the petitioner/accused for the offence punishable under Section 138 of the Negotiable Instruments Act.

4. The petitioner in the instant petition has contended that he there is no legally enforceable debt and that the respondent/complainant, has filed the private complaint in his individual capacity and not as the Power of Attorney holder of his wife K.Jayasree with whom the petitioner/accused had entered into an agreement of sale on 09.08.2006.

5. Mr.S.N.Kirubanandam, the learned counsel appearing for the respondent relied on the decision in Rangappa Vs. Sri Mohan, reported in (2010) 11 SCC 441 and contended that in cheque bounce cases, what the Courts have to consider is whether the ingredients of the offence enumerated in Section 138 of the Act have been met and if so, whether the accused was able to rebut the statutory presumption contemplated under Section 139 of the Act. He would further contend that in view of Section 139 of the Negotiable Instruments Act, it has to be presumed that a cheque is issued in discharge of any debt or other liability and the contrary view would render Section 138 a dead letter.

6. As far as the present cases is concerned, the cheques are issued in favour of the respondent/complainant and therefore, the complaint has been filed by the respondent/complainant. No doubt it is the admitted case of both the parties that a sum of Rs.30,00,000/- was paid towards sale consideration, as per the sale agreement entered into between the complainant's wife and the petitioner/accused. When the petitioner has chosen to issue cheques in favour of the husband of the person, with whom he entered into a contract for sale of a property, he cannot contend now that there is no legally enforceable liability and as per Section 139 of the Negotiable Instruments Act, there is a presumption, which ofcourse, can be rebutted by adducing acceptable evidence. Since it is a disputed question of fact, the same cannot be decided in the instant petition. Therefore, I do not find any reason to quash the proceedings.

7. It is also brought to the notice of the Court that NBW is pending against the petitioner/accused. The petitioner/accused is directed to appear before the learned XVII Metropolitan Magistrate at Saidapet, Chennai on 23.07.2018 failing which the learned Magistrate can pass further orders, in accordance with law.

8. The case is also pending from the year 2010 on the file of the learned XVII Metropolitan Magistrate at Saidapet, Chennai. The learned Magistrate is directed to dispose of the case in C.C.No.9202/2010 within a period of three months from the date of receipt of a copy of this order.

9. In the result, the Criminal Original petition is dismissed. Consequently, connected Miscellaneous Petition is also closed.

Sd/--

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

dna

To

The XVII Metropolitan Magistrate,
Saidapet, Chennai.

+lcc to Mr.R.Baskar, Advocate Sr.No.42000

sm:5.7.2018

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