

INTHE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P. No.27244 of 2018

and

CrI.M.P.No.15726 of 2018

Arun Jain

.. Petitioner/A2

. Vs .

M/s.Ashok Tex

Rep.by its Partner Ashok

..Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to STC No.416/2018, set aside the order dated 06.09.2018, passed by Special Judicial Magistrate (FAC), Special Court for Land Grabbing Cases, Salem in Cr.MP.No.1163 of 2018.

For Petitioner : Mr.D.M.Bhalla

For Respondent : No appearance

ORDER

This Criminal Original Petition has been filed, challenging the order passed by the Court below, dismissing the application filed by the petitioner to drop the proceedings initiated against the petitioner by the respondent.

2.The petitioner is facing a criminal Complaint before the Court below for an offence under Section 138 of the Negotiable Instruments Act, and he has been added as A-2 in the Complaint. During the pendency of the proceedings, the petitioner filed an application for dropping the proceedings on the following grounds:

a) The cheque was dishonored with an endorsement "account blocked" and therefore no offence is made out.

b) There are no original documents available on record and therefore no case has been made out against the accused.

c) Verification of pre-summoning evidence is not proper, and therefore, the Court below should not have issued the summons to the petitioner.

d) There is non-compliance of Section 65 B of the Evidence Act, and Bankers Book Evidence Act.

3. The Court below dismissed the petition filed by

the petitioner, under Section 251 of Cr.P.C, on the ground that the proceedings under Section 138 of the Negotiable Instruments Act is conducted as a summon case and the Court has taken into consideration the allegations made in the Complaint along with the documents produced and on being prima facie satisfied, has taken cognizance and issued summons to the petitioner under Section 204 of Cr.P.C. The petitioner even without appearing before the Court below has filed the petition through his counsel for dropping of the proceedings. The Court below also found that no case has been made out by the petitioner for dropping the proceedings. Accordingly, the petition was dismissed.

4.The learned counsel for the petitioner reiterated the same grounds taken before the Court below, before this Court also. The learned counsel also relied upon the following judgments in order to substantiate the case.

1. Subramaniam Sethuraman .Vs. State of Maharashtra reported in (2004) 13 SCC 324.
2. Dhariwal Tobacco Products Limited & Others .Vs. State of Maharashtra reported in (2009) 2 SCC 370.
3. Krishnakumar Variar .Vs. Share Shoppe reported in (2010) 12 SCC 485.
4. Bhushan Kumar & Another .Vs. State (NCT of Delhi) & Another reported in (2012) 5 SCC 424.
5. Urrshila Kerkar .Vs. Make My Trip (India) Pvt., Ltd., reported in 2013 SCC On line Del 4563.
6. Arvind Kejriwal .Vs. Amit Sibal reported in (2014) 1 HCC (Del) 719.

5.This Court has carefully considered the submissions made by the learned counsel for the petitioner. This Court finds that the petitioner has made a clear attempt to bring the entire proceedings to a grinding halt even without making his appearance before the Court in order to answer the substance of accusation against him. The attempt made by the petitioner is to discharge himself from the summon case instituted against him.

6.The issuance of process under Section 204 of Cr.P.C is a preliminary step in the stage of trial contemplated under chapter XX of Cr.P.C. Such an order made at a preliminary stage being an interlocutory order, can never be reviewed or reconsidered by the Magistrate, and there is no provision in Cr.P.C for doing the same.

The case involving a summons case is covered under chapter XX of Cr.P.C and it does not contemplate a stage of discharge like Section 239 of Cr.P.C, in a warrant case. In order to get over the same, the petitioner has found out a method to stop the proceedings, and therefore he filed a petition before the Court below to drop the proceedings, even without appearing, by raising various grounds. If this practice is permitted, in every 138 case, accused persons will start filing petition to drop proceedings even at the inception, without even appearing before the Court, and the same will result in the entire proceedings coming to a grinding halt. This will go completely contrary to the very object of a 138 proceedings, wherein the Act contemplates completion of the proceedings under Section 143 (3) within a period of six months from the date of filing of the Complaint. In a way entertaining petitions of this nature is also a ruse to over come the non availability of a provision for discharge in a summon case.

7. That apart, all the grounds that have been raised by the petitioner can be considered only during the course of proceedings and they cannot be decided at the inception. The judgments relied upon by the learned counsel for the petitioner will have absolutely no application to the facts of the present case.

8. In view of the above, this Court does not find any illegality or infirmity in the order passed by the Court below, and there are absolutely no grounds to interfere with the proceedings at this stage. Accordingly, this Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petition is dismissed.

Sd/-

Assistant Registrar (CS ix)

//True Copy//

Sub Assistant Registrar

To
The Special Judicial Magistrate (FAC),
Special Court for Land Grabbing Cases,
Salem.

Crl.O.P. No.27244 of 2018

ASK(14/12/2018)