



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 26.09.2018

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P. (MD) .No.1608 of 2014

and

M.P. (MD) Nos.1 and 2 of 2014

Sudhanth Kumar

..Petitioner

Vs.

Arokia Deva Amalan

..Respondent

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records in criminal complaint in C.C.No.373 of 2013 on the file of the Judicial Magistrate Court, Valliyoor, Thirunelveli District and quash the same.

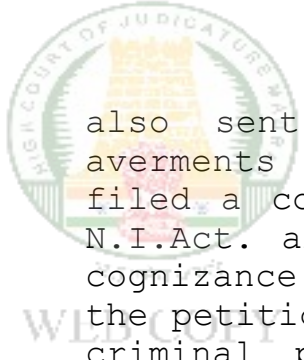
For Petitioner: Mr.V.Kannan

For Respondent: Mr.C.Susi Kumar

O R D E R

This quash petition is filed to quash the criminal proceedings in C.C.No.373 of 2013 on the file of the Judicial Magistrate Court, Valliyoor, Thirunelveli District filed by the respondent/complainant to punish the respondents for the offence under Section 138 of the Negotiable Instrument Act.

2.The case of the respondent/complainant is that the petitioner borrowed a sum of Rs.4,50,000/- and on condition that he would repay the same, within a period of three months. On the date of borrowal itself, the petitioner issued post dated cheque bearing No.816060 dated 27.05.2013 drawn on Indian Overseas Bank, Palayamkottai Branch. Thereafter, the petitioner also assured that on the date mentioned in the cheque or whatever date which is convenient for the respondent/complainant, it can be presented for collection. Accordingly, the respondent/complainant presented the said cheque for collection on 03.06.2013 at Tamilnadu Mercantile Bank, Panagudi. The said cheque was returned dishonoured for the reason that "insufficient fund" on 04.06.2013. The defacto complainant/respondent issued statutory notice dated 12.06.2013 to the petitioner herein. After receipt of the same, the petitioner



also sent reply notice dated 21.06.2013 denying the entire averments in the statutory notice. Therefore, the respondent filed a complaint to punish the petitioner under Section 138 of N.I.Act. and the learned Judicial Magistrate, Valliyoor has taken cognizance for the offence under Section 138 of N.I.Act against the petitioner in C.C.No.373 of 2013 and issued summons. The said criminal proceedings is under challenge in the present quash petition.

3.The learned counsel appearing for the petitioner raised the following grounds to quash the complaint as against the petitioner:

(i)There is no prima facie constitute any offence or make out the case as alleged by the respondent as against the petitioner, since there is no enforceable debt to prosecute the petitioner for the offence under Section 138 of N.I.Act. Even as per the averments made in the complaint, the petitioner borrowed loan on 27.05.2013 and on the same day, he issued the alleged cheque for the said sum and also instructed the respondent to present the same on the date mentioned in the cheque or for his convenient date. Admittedly, the said cheque was presented on 03.06.2013 itself.

(ii)In the first para of the complaint, it has been stated that the petitioner borrowed the loan and promised to repay the same within three months. Therefore, the said cheque was not issued for any legally enforceable debt. Therefore, he prayed for the entire quashment of the criminal proceedings as against the petitioner.

4.Per contra, the learned counsel appearing for the respondent would submit that the petitioner herein did not deny the issuance of cheque and did not deny his signature. Therefore, there is a presumption under Section 138 of N.I.Act and he is liable to be prosecuted. All the grounds raised by the petitioner have to be gone into by the trial Court and all are to be established during the trial. Therefore, he prayed for dismissal of the quash petition.

5.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

6.Admittedly, the petitioner borrowed a sum of Rs.4,50,000/- on 27.05.2013 and on the said date, he handed over the cheque dated 27.05.2013. It was presented for collection on 03.06.2013 itself. When the petitioner borrowed the loan only on 27.05.2013, he could not have issued the same on 27.05.2013 itself to repay the said amount. Further, it clearly shows that at the time of borrowal of the loan, the said cheque was handed over to



the respondent as security and as such, it can be construed that the said cheque is not issued for any legally enforceable debt by the petitioner.

7. It is also seen from the cheque allegedly issued by the petitioner from Antun Sounds in the capacity of proprietor, whereas, the loan borrowed by the petitioner is on his personal capacity. When the cheque issued from the proprietorship concern of Antun Sounds, the respondent failed to issue any statutory notice to the proprietorship concern and also did not implicate the said concern as an accused. Though it is not fatal to the case of the complainant, it shows that the way in which the respondent acted on the presentation of the cheque within 5 days from the date of borrowal. Therefore, the said cheque is not issued for any legally enforceable debt. In the reply notice issued by the petitioner dated 21.06.2013, he categorically denied the very borrowal itself. Further, he has stated that he purchased three plots through M/s.J.J.Land Promoters on instalment basis. On that transaction, he issued three cheques including the cheque in the present case to one Robert Jeyaseelan as security purpose. After receipt of the reply notice by the respondent, there is no rejoinder to the reply and also no denial in the complaint. Therefore, the present complaint is nothing but clear abuse of process of law.

8. Though the grounds raised by the petitioner involved in question of facts, it is relevant to rely the judgment of this Court dated 14.08.2018 made in CrI.O.P.(MD) No.19235 of 2013, wherein, this Court has held as follows:

"9. The learned counsel appearing for the respondent would rely upon the judgment reported in **2015(2) CTC 446 - HMT Watches Ltd. V. M.A.Abida** and **(2016) 10 Supreme Court Cases 458 - Sampelly Satyanarayana Rao V. Indian Renewable Energy Development Agency Ltd.**, wherein, the Hon'ble Supreme Court held that quashing of criminal complaint on disputed question of facts under Section 482 of Cr.P.C. is unwarranted and it has to be gone into by full fledged trial by the trial Court. Further, it has been held that the post dated cheques described as 'security' towards repayment of instalment of already disbursed loan amount, proceeding under Section 138 of N.I. Act is maintainable, in case of dishonour of such cheques"

9. Considering the said decision along with the facts and circumstances of the present case, the said decision is squarely applicable to the case on hand. Therefore, this Court is inclined to exercise the inherent power under Section 482 of Cr.P.C.



10. In view of the above discussion, this criminal original petition is allowed and the criminal proceedings in C.C.No.373 of 2013 on the file of the Judicial Magistrate Court, Valliyoor, Thirunelveli District as against the petitioner is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS-III)

To

The Judicial Magistrate Court,
Valliyoor, Thirunelveli District.

+ 1 CC TO MR.V.KANNAN, ADVOCATE IN SR NO.87110

Arul

BU/SKN/SAR-III:02.11.2018 : 4P/3C

order made in
CrI.O.P.(MD).No.1608 of 2014
and
M.P.(MD) Nos.1 and 2 of 2014
26.09.2018