



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on:18.01.2018

Pronounced on:02.02.2018

CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.(MD) No.16024 of 2017

and

Crl.M.P.(MD).Nos.10609 and 10610/2017

A.Murugesan

... Petitioner/sole Accused

-Vs-

Ramasamy

... Respondent/complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records in S.T.C.No.3183 of 2016 on the file of the Judicial Magistrate Court, Manaparai and quash the same as illegal and violation of law.

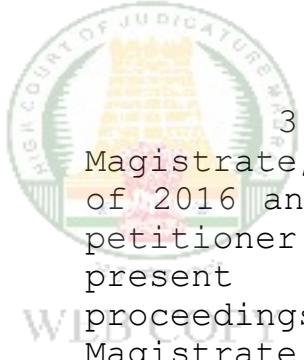
For Petitioner : Mr.M.V.Venkataseshan
For Respondent : Mr.A.Joel Paul Antony

ORDER

This Criminal Original petition has been filed by the accused to quash the proceedings in S.T.C.No.3183 of 2016 on the file of the Judicial Magistrate, Manaparai.

2.The brief facts of the case are as follows:

The respondent herein has filed a private complaint stating that the petitioner herein has entered into a sale agreement on 28.10.2015 with the respondent to sell the petitioner's property for Rs.12,00,000/- and also received Rs.10,50,000/- as advance. He also stated that the said agreement has been reduced into writing and also registered in the office of the Sub-Registrar, Sethiyathoppu and as per the said agreement, the petitioner has to execute the sale deed within 12 months, after receiving the balance sale consideration. He further stated that in spite of repeated requests, after six months from the date of agreement, the petitioner herein came to his house and expressed that he is not having intention to sell his property and with a view to repay the advance amount, he has issued two cheque leaves, each for Rs.5,00,000/-, dated 29.09.2016. He further stated that he has presented the said cheque leaves in the bank for collection on 29.09.2016 itself and they were returned as 'funds insufficient'. He further stated that after issuing a statutory notice, he has filed the private complaint under Section



3. Based on the said complaint, the learned Judicial Magistrate, Manaparai has taken the case on file in S.T.C.No.3183 of 2016 and issued summons to the accused/petitioner herein. The petitioner herein after receipt of the summons, has filed the present petition under Section 482 Cr.P.C to quash the proceedings in S.T.C.No.3183 of 2016 on the file of the Judicial Magistrate, Manaparai.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

5. The learned counsel for the petitioner has submitted that at the time of executing the sale agreement, the petitioner has issued two cheque leaves only for security purpose and not for discharging any debt or liability and hence, the dishonour of post-dated cheques given by way of security did not fall under Section 138 of the Negotiable Instruments Act.

6. The learned counsel for the respondent, on the contrary, contended that whether the cheque leaves were given as security or not or whether there were outstanding liability or not is a disputed question of fact, which could have been determined only by the trial court, after recording evidence of the parties. He further contended that the disputed question of facts cannot be decided in a petition filed under Section 482 Cr.P.C. In support of the said contentions, he relied upon the decision in **Sampelly Satyanarayana Rao Vs. Indian Renewable Energy Development Agency Limited [(2016) 10 Supreme Court Cases 458]**.

7. In the aforesaid decision, the Honourable Supreme Court, after referring to the earlier decision in **HMT Watches Limited Vs M.A.Abida [(2015) 11 SCC 776]**, has held that it is well-settled that while dealing with a quash petition, the Court has to ordinarily proceed on the basis of averments in the complaint and the court considering the prayer for quashing does not adjudicate upon the disputed question of fact. In **HMT Watches Limited Vs M.A.Abida** [supra], the Honourable Supreme Court in paragraph No.10 has observed as follows:

"10. Having heard the learned counsel for the parties, we are of the view that the accused (respondent 1) challenged the proceedings of criminal complaint cases before the High Court, taking factual defences. Whether the cheques were given as security or not, or whether there was outstanding liability or not is a question of fact which could have been determined only by the trial court after recording evidence of the parties. In our opinion, the High Court should not have expressed its view on the disputed question of fact in a petition under Section



482 of the Code of Criminal Procedure, to come to a conclusion that the offence is not made out. The High Court has erred in law in going into the factual aspects of the matter which were not admitted between the parties. The High Court further erred in observing that Section 138(b) of the NI Act stood uncomplained with, even though respondent 1 (accused) had admitted that he replied to the notice issued by the complainant. Also, the fact, as to whether the signatory of demand notice was authorised by the complainant company or not, could not have been examined by the High Court in its jurisdiction under Section 482 of the Code of Criminal Procedure when such plea was controverted by the complainant before it."

8. From the aforesaid decisions, it is clear that whether the cheque leaves were given as security or not or whether there are outstanding liability or not is a question of fact, which would have been determined only by the trial court, only after recording the evidence of the parties and the High Court should not have expressed its view on the disputed question of fact in a petition under Section 482 of Cr.P.C. Therefore, this Court cannot express any view with regard to the disputed questions of fact. Accordingly, this Criminal Original Petition is liable to be dismissed.

9. In the result, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate, Manaparai.

2. Do Through The Chief Judicial Magistrate,
Trichirapalli.

+1cc to Mr.M.V.Venkataseshan, Advocate Sr.No.45850

+1cc to Mr.A.Joel Paul Antony, Advocate Sr.No.45786

VS

VB/MR/SAR3/15.02.2018/3P/5C