BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on :16.03.2018

Pronounced on:21.03.2018

CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.(MD) No.20992 of 2016
and
Crl.M.P.(MD).Nos.10699 and 10700/2016
and
Crl.M.P.(MD).No.822 of 2017

G.Jamuna Devi ... Petitioner/ Accused

-Vs-

R.Ramesh
rep. through his power agent,
N.Palpandi. ... 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.180/2016, on the file of the learned Fast Track Court No.II, (Magisterial Level), Madurai and quash the same.

For Petitioner : Mr.M.Benazir Begum
for Mr.S.Thangaraj

For Respondent : Mr.S.Natesh Raja

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O R D E R

This Criminal Original petition has been filed by the accused under Section 482 Cr.P.C to quash the proceedings in S.T.C.No.180 of 2016 on the file of the Fast Track Court No.2, (Magisterial Level), Madurai.

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

The respondent herein has filed a private complaint against the petitioner under Section 138 of the Negotiable Instruments Act, alleging that he is the Managing Director of Thanga Reehal Theatre and also the Proprietor of Thangareehal Films. He also stated in his complaint that one Amarnath and Satheesh Kumar (son of the petitioner herein) are the partners of M/s.City Cine Creations. Both of them had produced a Tamil Film titled as 'Eli" starring Vadivel, Sadha and others. On 15.06.2015, the said Amarnath approached the respondent herein in his Office at Thangareehal theatre, Madurai in relation to the distribution of the said film in the area of old Madurai-Ramnad District cinema theatres. On the same day, the said Amarnath and Satheesh Kumar had entered into an agreement for distribution of the said film. As per the said agreement, the said Amarnath had received Rs.1,35,00,000/- from the respondent. The said film was released by the respondent herein in old Madurai-Ramnad Cinema Theatres. But, it was not successfully run and the collection was very low.

3.The respondent herein has further alleged in his complaint that as per the distribution agreement, the accounts were verified on 10.08.2015. The said Satheesh Kumar and Amarnath agreed to repay the amount of Rs.80,00,000/- to the respondent herein from the deposited amount received by them from the respondent herein. But, they are not ready to pay immediately, for which, Satheesh Kumar's mother, (the petitioner herein) agreed to pay Rs.40,00,000/- through her cheque. Accordingly, on 21.08.2015, the petitioner herein has issued a cheque dated 10.10.2015 for Rs.40,00,000/- in favour of the respondent herein. The respondent herein has presented the said cheque in the bank on 14.10.2015 and the same was returned as 'funds insufficient' and thereafter, he has issued a statutory notice, on 19.10.2015 and after receipt of the said notice, the petitioner herein did not come forward to pay the amount and hence, he has filed the private complaint under Section 138 of the Negotiable Instruments Act and the same was taken on file as STC.No.180 of 2016 on the file of the Fast Track Court No.II (Magistrate Level).

4.To quash the proceedings in S.T.C.No.180 of 2016 on the file of the Fast Track Court No.II, (Magistrate Level), Madurai, the accused has filed the present petition.

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

6.The learned counsel for the petitioner has submitted that the distribution agreement dated 15.06.2015 was not signed by the petitioner and also by the respondent. Originally, the said agreement was signed by one Mr.Amarnath, who is the partner of M/s.City Cine Creations and Mr.Alagarsamy, who is the Proprietor of Sushma Cine Arts. The respondent herein was arrayed as only a formal party in the said agreement. He further submitted that as per the agreement, the release period of the picture is for five years, but within a month, the respondent herein approached the said Amarnath and informed him that the film was not profitable and therefore, he persisted the said Amarnath to pay a sum of Rs.78,70,861/- with interest of Rs.3,93,500/-. She further submitted that due to the illegal attitude of the respondent, the said Amarnath and the petitioner's son Satheesh kumar were struggling a lot. In the mean while, on 10.08.2015, at about 11.00 a.m, the respondent herein and his five henchmen abducted the said Amarnath and threatened him to pay a sum of Rs.80,00,000/-, failing which, they will cause death to him. Due to the coercion, without knowing the way to save the life of his partner, the petitioner's son issued an undated cheque of his mother bearing No.147577 for a sum of Rs.40 lakhs and another undated cheque bearing No.768592 of the mother of the said Amarnath for a sum of Rs.40 lakhs and Amarnath also issued one cheque. Moreover, the respondent herein had received two unfilled promissory notes, one was signed by the mother of the said Amarnath and further the respondent has received original document of the sale deed standing in the name of the petitioner's son.

7.The learned counsel for the petitioner has further submitted that even after receiving those documents, the respondent herein did not release the said Amarnath from his illegal custody. Again, he threatened the petitioner's son to execute a mortgage deed and accordingly, the petitioner herein and her son have executed a mortgage deed in favour of the respondent's henchmen namely M.Sakthivel for a sum of Rs.5 lakhs in respect of the house property. The mother of Amarnath has executed a mortgage deed in favour of the said Sakthivel for a sum of Rs.5 lakhs in respect of her house property. She further submitted that the petitioner's son gave a complaint before the Commissioner of Police, Madurai City, dated 30.09.2016, in which, he has narrated all the facts, but the police has not taken any action for registering the case. She further submitted that in the mean while, the respondent herein has filed a private complaint under Section 138 of the Negotiable Instruments Act and the said complaint is not maintainable. The respondent herein is a stranger to the money transaction between M/s City Cine Creations and M/s Sushma Cine Arts. She further submitted that the cheque in question was not issued by the petitioner to the respondent for any legally enforceable debt or existing liability and therefore, she requests to quash the proceedings in S.T.C.No.180 of 2016 on the file of the Fast Track Court, No.II, (Magisterial Level), Madurai.

8.In support of the aforesaid contentions, she has relied upon the following decisions:

i)Subburam Vs Rajendran (2008) 1 MLJ (Crl) 945
ii)V.Ponkasamuthu Vs. M.Authimuthu (2009) 2 MLJ (Crl) 539
iii)K.Kumaravel Vs. R.P.Rathinam (2011) 3 MLJ (Crl) 155

9.The learned counsel for the respondent has submitted that even though the petitioner is not a party to the film distribution agreement, dated 15.06.2015, the petitioner being the mother of one of the partners of M/s City Cine Creations, has agreed to settle the amount to the respondent herein and issued a cheque for Rs.40,00,000/-. He further submitted that as per the Section 138 of the Negotiable Instruments Act, even if the cheque is given towards any liability or debt which might have been incurred by some one else, the person who is the drawer of the cheque can be made liable. In support of the said contentions, he relied upon the decision in Anil Sachar and another Vs Shree Nath Spinners Private Limited and others (2012) 1 Supreme Court Cases (Cri) 799= (2011) 13 Supreme Court Cases 148. He further submitted that the said Amarnath, who was said to have been kidnapped has not preferred any complaint. The complaint preferred by the petitioner's son was closed after enquiry as nothing reveals in the course of enquiry regarding the alleged kidnapping. He further submitted that whether the respondent herein has obtained cheque from the petitioner herein by coercion is the matter of fact to be established only in the trial. The disputed question of fact cannot be decided in the proceedings under Section 482 Cr.P.C. In support of the said contention, he relied upon the decision of the Honourable Supreme Court in HMT Watches Limited Vs M.A.Abida and another (Crl.Appeal No.471 of 2015).

10.The petitioner has stated in this petition that on 10.08.2015, the respondent herein and his five henchmen have abducted the petitioner's son's partner namely Amarnath and threatened him that he should pay a sum of Rs.80,00,00/-, failing which, they will cause death to him. She also stated that to save the life of the said Amarnath, her son has paid a sum of Rs.2,38,953/- through his friend and promised to settle the issue in person on the same day. However, the respondent did not agree to release the said Amarnath from his illegal custody and sent his henchmen to the Office of her son. She further stated that on coercion and threatening and without knowing the way to save the life of the said Amarnath, her son was compelled to issue an undated cheque of his mother (the petitioner herein) for Rs.40,00,000/-. But in the reply notice, sent by the petitioner herein, dated 31.10.2015, she has not stated the aforesaid facts. She has not stated that the said Amarnath was kidnapped and only for saving his life, her son was compelled to issue his mother's cheque (petitioner herein). On the contrary, she has stated that the respondent herein threatened the petitioner's son and Amarnath to return the loss amount and hence, the petitioner's son and his partner Amarnath gave Rs.8,00,000/- and registered her property and apart from that, the respondent herein got so many blank cheques and a promissory note from the petitioner, her son and Amarnath and his mother as security and one among the blank cheques is referred in the notice. So, it appears that she has admitted in her reply notice that she has issued the cheque, which is in dispute as a security to the respondent herein.

11.In Subburam Vs Rajendran (supra), in the complaint, it was stated that the accused's brother Vijayakumar received a sum of Rs.75,000/- and subsequently, he did not repay the amount and hence, a complaint was preferred against the said Vijaya Kumar before Aruppukkottai Town Police Station and during the enquiry, the accused admitted that his brother has received Rs.75,000/- and he will pay the said amount and issued three cheque leaves and when the said cheque leaves were presented for encashment, they were returned as "payment stopped by drawer" and after issuing notice, a complaint was filed under Section 138 of the Negotiable Instruments Act, the accused filed a petition under Section 482 Cr.P.C to quash the same. This Court, taking into consideration the admitted facts of the complainant that the accused, after admitting the criminal liability of his brother, and undertakes to pay the amount, legally. The accused cannot be compelled to pay the amount and there is no legally enforceable debt or other liability and accordingly quashed the said proceedings. But, in this case, the respondent herein has not admitted that the allegation of the petitioner that the respondent had kidnapped one Amarnath and only for saving his life, the petitioner has issued a cheque. Therefore, the aforesaid decision will not apply to the facts of this case.

12.In V.Ponkasamuthu Vs. M.Authimuthu (supra), a complaint was filed under Section 138 of the Negotiable Instruments Act. The trial court has acquitted the accused, after considering the evidence adduced by both sides. As against the same, the complainant has preferred an appeal before this Court. This Court, after analysing the evidence adduced by both sides found that the cheque leaves were issued not for discharging legally enforceable debt. So, the said decision cannot be applied for deciding the petition which has been filed under Section 482 Cr.P.C.

13.In K.Kumaravel Vs. R.P.Rathinam (supra), a complaint was filed under Section 138 of the Negotiable Instruments Act stating that the accused had business transaction with the complainant's wife and that the accused took over the business and for settling the dues, he has given a cheque for Rs.10,00,000/-. In that case, the complainant has claimed settlement of accounts for the business of the year 2003 and only in the year 2008, a demand was made and the alleged cheque was issued in the year 2010 and the alleged account itself is a time barred debt. This Court has held that the cheque was issued to discharge the time barred debt and therefore, it cannot be said that the cheque was issued to discharge a legally enforceable debt and consequently, quashed the proceedings. In this case, it is not the case of the petitioner that the debt is a time barred one. So, the aforesaid decision will not apply to this case.

14.In Anil Sachar and another Vs Shree Nath Spinners Private Limited and others (supra) , the Honourable Supreme Court, after referring to the judgment in ICDS Limited Vs. Beena Shabeer and another (supra), has held that if the cheque is given for any liability or debt which might have been incurred even by some one else, the person, who is the drawer of the cheque can be made liable under Section 138 of the Negotiable Instruments Act. The relevant portion of the judgment is extracted hereunder:

"20.We may also refer to the judgment delivered by this Court in ICDS Ltd., In the said judgment this Court has referred to the nature of liability which is incurred by the one who is a drawer of the cheque. If the cheque is given towards any liability or debt which might have been incurred even by someone else, the person who is the drawer of the cheque can be made liable under Section 138 of the Act. The relevant observation made in the aforestated judgment is as under:

> "The words 'any cheque' and 'other liability' occurring in Section 138 are the two key expressions which stand as clarifying the legislative intent so as to bring the factual context within the ambit of the provisions of the statute. These expressions leave no manner of doubt that for whatever reason it may be, the liability under Section 138 cannot be avoided in the event the cheque stands returned by the banker unpaid. Any contra-interpretation would defeat the intent of the legislature. The High Court got carried away by the issue of guarantee and guarantor's liability and thus has overlooked the true intent and purport of Section 138 of the Act. (SCC p-426 e.g)
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> 10.The language, however, has been rather specific as regards the intent of the legislature. The commencement of the section stands with the words ' where any cheque'. The abovenoted three words are of extreme significance, in particular, by reason of the user of the word 'any' - the first three words suggest that in fact for whatever reason if a cheque is drawn on an account maintained by him with a banker in favour of another person for the discharge of any debt or other liability, the highlighted words if read with the first three words at the commencement of Section 138, leave no manner of doubt that for whatever reason it may be, the liability under this provision cannot be avoided in the event the same stands returned by the banker unpaid. The legislature has been careful enough to record not only discharge in whole or in part of any debt but the same included other liability as well. This aspect of the matter has not been appreciated by the High Court, neither been dealt with or even referred to in the impugned judgment."

21.Looking to the facts of the case and law on the subject, we are of the view that all the four cheques referred to in both the complaints are presumed to have been given for consideration. The presumption under Section 139 of the Act has not been rebutted by the accused, and, therefore, we are of the view that the trial court wrongly acquitted the accused by taking a view that there was no consideration for which the cheques were given by Munish Jain to the complainants. The aforesaid incorrect view was wrongly confirmed by the High Court. We therefore, set aside the acquittal order and convict accused Munish Jain under Section 138 of the Act."

15.From the aforesaid decision, it is clear that even if the cheque is given towards any liability or debt which might have been incurred by someone else, the person who is the drawer of the cheque can be made liable under Section 138 of the Negotiable Instruments Act.

16.In HMT Watches Limited Vs M.A.Abida and another (supra), the Honourable Supreme Court has held that whether the cheques were given as security or not or whether there was any outstanding liability or not is a question of fact which could have been determined only by the trial court, after recording evidence from the parties. It was further observed that the High Court should not have expressed its view in a petition under Section 482 Cr.P.C to come to a conclusion that the offence is not made out. Therefore, this Court, while dealing with the petition under Section 482 Cr.P.C cannot go into the question of fact as to under what circumstances, the cheque was issued by the petitioner herein. The said question can be decided by the trial court, after considering the evidence. Therefore, this petition is liable to be dismissed.

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

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar/-

To
The Judicial Magistrate,
The Fast Track Court, No.II,
(Magisterial Level), Madurai.
+1cc to Mr.S.Natesh Raja, Advocate, SR.No.56678
vs
RL/3C/7P/SV/MMS/SAR1/17/4/2018

Order made in
Crl.O.P.(MD) No.20992 of 2016
21.03.2018