

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****Reserved on : 14.08.2018****Pronounced on : 04.09.2018**

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CORAM:**THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN****Cr1.O.P. (MD) .No.19235 of 2013****and****M.P (MD) .No.1 of 2013**

Karthik V.R.Thondaiman

..Petitioner

Vs.

R.M.Karthikeyan

..Respondent

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.88 of 2007 on the file of Judicial Magistrate, Kodaikanal and quash the same.

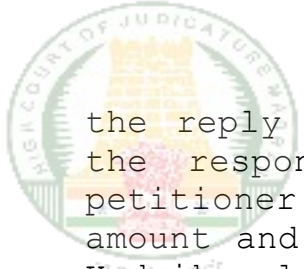
For Petitioner :Mr.N.Mohideen Basha

For Respondent :Mr.R.Gandhi

O R D E R

This quash petition is filed to quash the criminal proceedings in C.c.No.88 of 2007 on the file of the Judicial Magistrate, Kodaikanal having been taken cognizance for the offences under Section138 of Negotiable Instrument Act against the petitioner/Accused.

2.The case of the respondent/complainant is that the petitioner is known to him. The petitioner and his mother borrowed a sum of Rs.40,00,000/- from the respondent's wife on 02.04.2004 on execution of registered mortgage deed of their properties. Again, for the urgent need of the petitioner herein, he borrowed a sum of Rs.7,00,000/-on 02.05.2007 and at the time of borrowal of the loan, the petitioner issued post dated cheque bearing No.0544530 dated 16.05.2007 drawn on State Bank of India, Trichirappalli for the said sum. When the cheque was presented for collection on 21.05.2007 through the State Bank of India, Kodaikanal, it was dishonoured and returned on 06.06.2007 for the reason "Insufficient Funds". Thereafter, the respondent issued statutory notice dated 13.06.2007 and the same was duly received by the petitioner on 16.06.2007. The petitioner also replied by

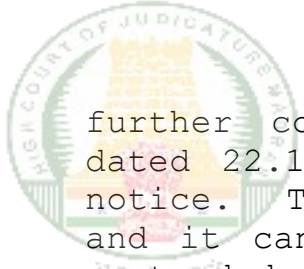


the reply notice dated 26.06.2006 and after receipt of the same, the respondent also issued rejoinder dated 29.06.2007 to the petitioner. Thereafter, the petitioner did not pay the cheque amount and hence, the complaint. The learned Judicial Magistrate, Kodaikanal had taken cognizance for the offences under Section 138 of Negotiable Instrument Act against the petitioner and it is pending for trial.

3.The learned counsel for the petitioner/accused would submit that according to the case of the respondent, the petitioner and his mother borrowed a sum of Rs.40,00,000/- on 02.04.2004 on execution of a mortgage deed. Thereafter, without repaying the same, on 02.05.2007, again, the petitioner borrowed a sum of Rs.7,00,000/-. Therefore, when the first loan itself is pending, the further loan as alleged by the respondent herein it not at all possible and it is unbelievable.

4.The learned counsel for the petitioner would further submit that the petitioner and his mother jointly issued notice dated 22.11.2005 to the respondent and his wife stating that in June 2003, the petitioner and his mother borrowed a sum of Rs.6,00,000/-, in which, Rs.2,00,000/- has been deducted as interest and remaining amount only lend by the respondent herein. At the time of borrowal of loan, the respondent obtained signed blank promissory notes and also two signed blank cheques drawn on State Bank of India, Main Branch, Trichy from the petitioner in the month of April 2004. Again, the petitioner and his mother borrowed a sum of Rs.15,00,000/-, in which Rs.5,00,000/- has been deducted for future interest and remaining amount of Rs.10,00,000/- only lend to the petitioner and his mother. On the said date, the petitioner and his mother registered the mortgage deed in favour of the respondent and also issued signed blank cheques and pro-notes in favour of the respondent. Therefore, the petitioner and his mother called upon the respondent not to present the above mentioned cheques for collection as they were not issued in discharging of any liability. Further, on 22.11.2005 itself, the petitioner and his mother issued letter to the Branch Manager, Canara Bank, Pudukottai and informed that the above cheques were not issued in discharging of any liability and as such, requested the bank not to honour those cheques, if presented for collection. After receipt of the same, the respondent issued reply notice dated 02.12.2005 and he simply denied the averments made in the notice dated 22.11.2005 and no specific denial of receipt of signed blank cheques from the petitioner and his mother. Therefore, the present complaint is nothing but abuse of process of law and is liable to be quashed.

5.The learned counsel appearing for the respondent submitted that this quash petition is filed on disputed question of facts and the petitioner raised factual defences and as such, it cannot be quashed under Section 482 of Cr.P.C. He would



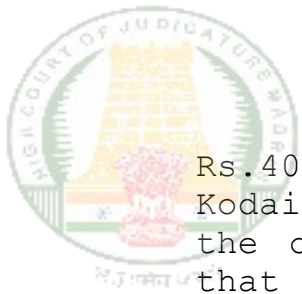
further contend that the respondent never admitted the notice dated 22.11.2005 and disputing the contents noticed in the said notice. Therefore, it has to be gone into by full fledged trial and it cannot be considered at the initial stage. Further, he contended that even assuming that the cheques are issued for the purpose of security at the time of borrowing the loan in the year 2003, it was issued only for legally enforceable debt and as such, the complaint is very much maintainable under Section 138 of N.I.Act and prayed for dismissal of the quash petition.

6.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

7.Admittedly, the petitioner and his mother borrowed a loan on execution of registered mortgage deed of their properties in favour of the respondent and his wife. When it being so, without repaying the same, again on 02.05.2007, the petitioner borrowed a sum of Rs.7,00,000/- on issuance of post dated cheque for the said sum dated 16.05.2007. It is seen from the notice dated 22.11.2005 issued by the petitioner and his mother to the respondent and his wife, calling upon them not to present the cheques obtained at the time of borrowing the loan viz., in the year 2003 and 2004 for collection as they were not issued in discharging of any liability. The very relevant portion of the said notice is as follows:

"2.My clients during the relevant period were hardly pressed for money for the discharge of his father's liabilities and for his business. Hence my clients were in a financially strained position, they agreed for the condition imposed by you for lending the money and received cash of Rs.4 lakhs and put their signatures in blank pronote forms. At that time my client No.2 signed two blank cheques on State Bank of India, Main Branch, Trichy as demanded by you.

3.In April 2004, my clients were in need of money of Rs.15 lakhs. They approached you for a loan of Rs.15 Lakhs. As usual you agreed to lend money deducting Rs.5 lakhs being interest for two years and offered to give cash of Rs.10 lakhs. You again wanted my clients to execute blank pronotes and cheques. As my clients were hard pressed for money, they agreed to comply with all the unjust demands made by you. My client No.2 signed in 3 blank pronote forms and my client No.1 gave 5 signed blank cheques on Canara Bank, Puducottai branch on the SB A/C No.23398, the cheque Nos.bearing 803256 to 803260. My client No.2 signed in a blank pronote form and he gave 10 signed blank cheques on SBI, Personal Banking Division, Main Branch, Trichy bearing numbers 0304301 to 0304310 in A/C No.01190109250.



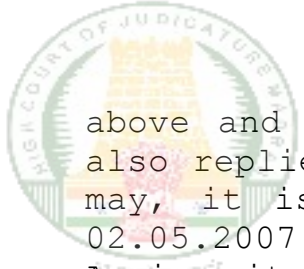
4.You also got a mortgage deed on 02.04.2004 for Rs.40 lakhs mortgaging my client's property at Kodaikanal. At the time of mortgage, my clients gave the original title deeds to you. You told my clients that it is your practice to get the documents for the double the amount advanced. The actual amount paid by you was only Rs.14 lakhs. For the loan given by you, my clients have repaid more than Rs.12 lakhs to you by way of cash and Demand Draft. The balance alone is repayable. No interest at more than 9% p.a. Can be claimed.

5.On the date of mortgage you did not pay Rs.40 lakhs to my clients and you are not having the capacity to advance such a huge amount. Under law such amounts have to be paid only through cheque and not in cash.

6.While things are like that on 20.11.2005, your husband came with number of rowdy elements to the house of my clients at Trichy and threatened them to pay interest at the 'Metre rate' of interest and told them of the interest is not paid he will trespass into the house of my clients at Kodaikanal and cause damage to the things therein and also assault my clients causing permanent disability to them. If such an act is repeated, my clients will take action against you under the Prevention of Money Laundering Act, Prevention of Charging Exorbitant Interest Act and other relevant acts in the Criminal Court. Please refrain from threatening my clients. Otherwise legal action will be taken against you. You are also hereby informed not to present the above mentioned cheques for collection as they were not issued in discharge of any liability."

After receipt of the same, the respondent issued reply notice dated 02.12.2005, wherein, except the general denial of the notice dated 22.11.2005, no specific denial of receipt of the blank signed pronotes and blank signed cheques from the petitioner and his mother. Therefore, it is construed that the alleged cheque bearing No.0544530 dated 16.05.2007 drawn on State Bank of India, Trichirappalli has been obtained by the respondent in the year 2003, while borrowing a loan of Rs.4 lakhs. It can be treated as security for the loan borrowed by the petitioner and his mother.

8.It is also seen that even as per the case of the respondent that on 02.04.2004, the petitioner and his mother borrowed a sum of Rs.40,00,000/- on execution of registered mortgage deed of their properties in favour of the respondent and ~~without repaying the said loan, again on 02.05.2007, the petitioner borrowed a sum of Rs.7,00,000/-.~~ Admittedly, the petitioner and his mother issued notice on 22.11.2005 as stated



above and after receipt of the same, the respondent and his wife also replied through reply notice dated 02.12.2005. Be that as it may, it is impossible to lend loan for a sum of Rs.7 lakhs on 02.05.2007 to the petitioner. It is also unbelievable one. Again, it can be construed that the alleged cheque was already obtained for the purpose of security, while borrowing the loan in the year 2003 and 2004. That apart in the said notice dated 22.11.2005, the petitioner and his mother specifically averred the cheque particulars and pronotes obtained by the respondent herein. Therefore, the present complaint is nothing but abuse of process of law.

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.

10.It is seen from the facts and circumstances of this case, though it is disputed questions of facts, from seeing the notice dated 22.11.2005 and the reply notice dated 02.12.2005, it is clear abuse of process of law. Therefore, the above judgments cited by the learned counsel appearing for the respondent are not applicable to the present case on hand. That apart, the alleged cheques were not issued for any legally enforceable debt. It is also proved from the notice dated 22.11.2005 that the said alleged cheques and other pronotes were obtained by the respondent/complainant at the time of borrowal of loan in the year 2003 and 2004. Therefore, the alleged cheques were not issued by the petitioner for any legally enforceable debt. In such circumstances, the petitioner cannot be subjected to ordeal trial. Therefore, the complaint cannot be sustained and it is liable to be quashed.

11.In view of the above discussions, this criminal original petition is allowed and complaint in C.C.No.88 of 2007 on the file of Judicial Magistrate, Kodaikanal is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/



To

The Judicial Magistrate, Kodaikanal.

+1cc to Mr.N.Mohideen Basha, Advocate Sr.No.82150

+1cc to Mr.R.Gandhi, Advocate Sr.No.82035

ARUL

VB/SNK/SAR3/19.09.2018/6P/4C

order made in
Crl.O.P. (MD) .No.19235 of 2013
and
M.P (MD) .No.1 of 2013
04.09.2018