IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.11.2018

Pronounced on : 24.01.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.21135 of 2011
and
Crl.M.P.No.1 of 2011

V.Ganesan,
S/o.Velayudham. ... Petitioner/Second Accused

Vs.

1.Latha,
W/o.Alexandar. ... Respondent/Complainant

2.A.N.Vaithiyanathan,
S/o.Natarajan. ... Respondent/First Accused

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.617 of 2009, on the file of the learned II Additional District Munsif, Puduchery and quash the same.

For Petitioner : Mr.K.Shyam Sunder

For Respondents: No Appearance [Name Printed]

O R D E R

This Criminal Original Petition is filed to call for the records in C.C.No.617 of 2009, on the file of the learned II Additional District Munsif, Puduchery and quash the same.

2.Heard the learned counsel for the petitioner. None appeared for the respondents.

3.It is seen from the records that the first respondent/complainant has not appeared before this Court, despite, receipt of the notice. The name of the first respondent/complainant has been printed in the cause list, thereafter to there was no representation on behalf of the first respondent/complainant. Hence, this Court proposed to proceed the case on merits as adjourning the case without any progress would serve no purpose.

4.The petitioner, who is the second accused in a private complaint for the offence under Section 138 read with 142 of the Negotiable Instruments Act filed by the first respondent/complainant.

5.The case of the complainant is that the second respondent namely A.N.Vaithiyanathan/accused No.1 in discharge of his debts due to the complainant had drawn six cheques and the details are as follows:

SI. No.	Cheque Number	Date of Cheque	Amount Rs.	Name of the Bank in which the cheque was drawn
1	139576	16.07.2006	Rs.5,00,000/-	ICICI Bank Ltd., Puducherry
2	441274	19.07.2006	Rs.1,00,000/-	Canara Bank, Puducherry
3	441275	21.07.2006	Rs.1,00,000/-	Canara Bank, Puducherry
4	441276	24.07.2006	Rs.1,00,000/-	Canara Bank, Puducherry
5	441277	27.07.2006	Rs.1,00,000/-	Canara Bank, Puducherry
6	377297	31.07.2006	Rs.1,00,000/-	Bharat Overseas Bank Ltd., Puducherry

Of which the first cheque bearing No.139576 dated 16.07.2006 for Rs.5,00,000/- drawn on ICICI Bank Limited, Puducherry was handed over to the complainant by the petitioner/second accused, as if the second respondent/accused No.1 had given the said cheque. When the same was presented for collection through the first respondent/complainant's banker viz., UCO Bank, Puducherry, the said cheque was dishounoured by the bankers of the accused for the reason “PAYMENT STOPPED BY DRAWER” and the same was intimated by the complainant's banker on 02.01.2007.

6.With regard to the cheques in SI.Nos.2 to 6, which are of no concern for this petitioner, since, they were drawn and issued by the second respondent/accused No.1. The cheques in SI.Nos.2 to 6 were dishonoured for the reasons “INSUFFICIENT FUND”. The above said cheques in SI.No.2 to 6 were issued by the second respondent/accused No.1 in discharge of the debts due to the complainant and the second respondent/accused No.1 is liable to repay the above amount for the above cheques.

Thereafter, statutory notice dated 24.01.2007 was issued to the petitioner and the second respondent/accused No.1. Therefore, the case came to be filed.

7.The contention of the learned counsel appearing for the petitioner is that it is the second respondent/accused No.1 viz., A.N.Vaithiyanathan, who had issued the cheques in SI.Nos.2 to 6 in discharge of his liability.

8.Admittedly, the case of the first respondent/complainant is that A.N.Vaithiyanathan/accused No.1 had received the loan from him, in discharge of the same the above said cheques were issued. One of the cheque said to have been handed over to the complainant by this petitioner on behalf of the second respondent/accused No.1. This petitioner on receipt of the statutory notice had given a detail reply on 01.03.2007. Earlier to it on 23.12.2006, this petitioner had instructed his bank stating that the cheque Nos.139576 to 139600 were misplaced and lost on 06.11.2006. On the same day, a complaint has been lodged with the Station House Officer, Lawspet Police Station and a missing certificate was also given by them on 20.11.2006. The petitioner had informed the same to his bank on 23.12.2006. In his reply notice he had categorically stated about the missing/lost of the cheque in SI.No.1, which is one of the cheque lost by the petitioner/second accused on 06.11.2006.

9.Further contention is that the complainant as well as the second respondent/accused No.1 are all totally strangers to the petitioner and he had no transaction with them. The categorical assertion of the complainant is that it is the accused No.1/A.N.Vaithiyanathan, who had issued the cheques in discharge of his liability to the complainant and admittedly, this petitioner had not availed any loan from the complainant.

10.In view of the same and from the typed set of papers, it is seen that the letter, which had been issued to the Manager of the ICICI Bank about the lost of the cheques on 23.12.2006, wherein he had stated about the missing of the cheque leaves and the police complaint given by the petitioner.

11.The learned counsel for the petitioner relied upon the decision reported in ILR2008NULL974 in the case of Jose Vs. P.C.Joy, wherein it has been held that since drawing is not established, presumption under Section 139 cannot be drawn as one of the requirements under Section 139 is not proved in this case. All these aspects were considered in detailed in the decision reported in Kamalammal Vs. Mohanan 2006 (3) KLT 972 and hence, the complainant cannot take the aid of presumption under Section 139 of the Act, in the absence of proving that the cheque was drawn by the accused.

12.On considering the merits and submissions, this Court finds that it is an admitted case of the complainant that this petitioner had not availed any loan from the complainant and there was no reason for this petitioner to issue a cheque fortified by the letter given to the bank and the reply notice. The complainant having received the reply of the petitioner has not refuted the same and sent any denial. The cheque as far as the petitioner is concern is not given in discharge of any debt or liability of this petitioner.

13.Accordingly, this Criminal Original Petition stands allowed and the proceedings in C.C.No.617 of 2009, on the file of the learned II Additional District Munsif, Puduchery against the petitioner/second accused is quashed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ah
To

1.The II Additional District Munsif,
Puducherry.

2.The Public Prosecutor,
High Court, Madras.

Crl.O.P.No.21135 of 2011

kk[co]
srg 15/02/2019