

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.O.P.No.16222 of 2013

and

Cr1.M.P.No.1 of 2013

R.Swathi Saravanan,
S/o.Rathanavel.

... Petitioner/accused

Vs.

K.Bhuvaneshwaran,
S/o.Kanagasabapathi Gounder.

... Respondent/complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in respect of the complaint filed by the respondent herein in S.T.C.No.929 of 2013 on the file of the Judicial Magistrate Court No.I, Sankari and quash the same.

For Petitioner : Mr.R.Nalliyappan

For Respondent : Mr.S.Noorudeen
for Mr.C.D.Johnson

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in S.T.C.No.929 of 2013, on the file of the Judicial Magistrate Court No.I, Sankari.

2.The contention of the learned counsel for the petitioner is that the respondent was an erstwhile friend to the petitioner. The petitioner had borrowed a sum of Rs.1,99,000/- (Rupees one lakh and ninety nine thousand only) as hand loan from the respondent for her business development. In fact, she had borrowed a sum of Rs.1,00,000/- (Rupees one lakh only) from the respondent during January, 2010 and at that point of time, she had handed over three blank undated, un-filled but signed cheques as security and thereafter, she made arrangements and repaid the loan amount with 12% interest on 02.01.2010. Suppressing these facts, the respondent had filed the above case under Section 138 of the Negotiable Instruments Act.

3. According to the learned counsel for the petitioner, the liability of the respondent for the cheques in the above case have been discharged. Hence, she prayed for quashing of the proceedings in S.T.C.No.929 of 2013 on the file of the Judicial Magistrate Court No.I, Sankari.

4. The admitted case of the petitioner is that she had given three blank undated, unfilled and signed cheques for the loan availed from the respondent. The learned counsel for the petitioner relied upon the Judgment of this Court in the case of Retnabai Versus Belarmine Joseph reported in MANU/TN/3048/2013. The relevant portion of the Judgment is extracted here under:-

"27. Section 20 of the Negotiable Instruments Act, 1881 speaks of inchoate instruments. If a person who has signed the cheque in question and delivers the said cheque to another by not filling up the writings of the cheque viz., the writing of the amount and subsequently, if the holder of the cheque either himself makes the writings of the amount in the cheque or even allows a stranger/third party to write the writings in regard to the amount and that too in a different ink, yet, it cannot be found fault with, since the Negotiable Instruments Act permits such an act to be performed, which is not either invalid or illegal, in the eye of law.

28. It is to be borne in mind that the ingredients of Section 20 of the Negotiable Instruments Act would not be attracted either as a matter of routine or automatically. However, these are all matters of evidence to be adduced by the parties before the trial Court. Before coming to the conclusion as to the application of Section 20 r/w. Section 118 of the Negotiable Instruments Act, no wonder, the burden of proof should be applied in a proper manner."

5. As per Section 87 of the Negotiable Instruments Act, wherein the party who consents to the alteration as well as the party who made the alteration are disentitled to complain against such alteration, e.g., if the drawer of the cheque himself altered the cheque for validating or re-validating the same instrument, he cannot take advantage of it later by saying that the cheque became void as there is material alteration thereto. Further, even if payee or the holder of the cheque made the alteration with the consent of the drawer thereto, such alteration also cannot be used as a ground to resist the right of the payee, or the holder thereof. It is always a question of fact whether the alteration was made by the drawer himself or

whether it was made with the consent of the drawer. It requires evidence to prove the aforesaid question whenever it is disputed. Further the petitioner's contention are all disputed facts, which could not be decided in a quash petition. The grievance of the petitioner is to be decided only at the time of trial.

6.Considering the rival submissions, this Court is not inclined to accept the contention of the petitioner and the points raised by the petitioner, which is to be decided only during trial.

7.In view of the above, the quash petition is dismissed, since the case is pending trial from the year 2013, on the file of the Judicial Magistrate Court No.I, Sankari and the trial Court is directed to complete the trial, within a period of six months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition stands closed.

s/d-
Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

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To

1. The Judicial Magistrate No.1
Sankari.

+1 CC to Mr.R.Nalliyappan, Advocate sr 16748.

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NMI (CO)
SP(10/04/2019)

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