

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.10.2019

Pronounced on : 25.10.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No.908 of 2019
and Crl.M.P.No.588 of 2019

T. Senthil

.. Petitioner

Vs.

S.Thalavaiya

.. Respondent

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., praying to call for the records culminating in STC. No.1263 of 2018 dated 21.08.2018 on the file of the learned Judicial Magistrate, Tambaram and to quash the same.

For Petitioner : Mr.S.Sivaraman

For Respondent : Mr.A.P.Sathyamurthy

O R D E R

The private complaint filed by the respondent herein for an offence under Section 138 of the Negotiable Instrument Act, 1881 (hereinafter referred to as 'NI Act') is under challenge in the present Criminal Original Petition.

2. Heard Mr.S.Sivaraman, learned counsel for the petitioner and Mr.A.P.Sathyamurthy, learned counsel for the respondent.

3. The learned counsel for the petitioner would submit that the impugned complaint cannot be sustained since there is no legally enforceable debt under the cheque. According to the learned counsel, the agreement referred to in the complaint is only between the petitioner and 'RS Infotainment', wherein the cheques were issued only for security purposes, which ought not to have been deposited by the respondent herein. The learned counsel also submitted that the alleged payment of Rs.10 lakhs by demand draft and the balance amount of Rs.1,30,000,00/- by way of cash, is a blatant lie as such a huge amount cannot be given by way of cash. Even otherwise, the transactions between the petitioner

and the respondent is a subject matter of a Civil Suit in C.S.No.637 of 2018, initiated by the petitioner herein.

4. The learned counsel relied upon the decision of the Hon'ble Apex Court in the case of State of Haryana and others V. Bajan lal and others reported in AIR 1992 SC 604 and submitted that the averments in the complaint are absurd and inherently improbable on which basis, no just conclusion can be arrived at. The learned counsel also relied upon a decision of M/s.Indus Airways Pvt. Ltd., and others Vs. Magnum Aviation Pvt. Ltd., and others reported in 2014 (4) Scale 645 and submitted that security cheques cannot establish the existing debt or liability. The said decision has been followed by the Delhi High Court in Shivom Minerals Ltd., Vs. State (Delhi).

5. The learned counsel for the respondent submitted that the petitioner had borrowed a sum of Rs.1,40,000,00/- and executed a loan agreement along with promissory notes and had issued undated signed cheques as securities. Since the petitioner had defaulted in making the payments and on his instructions, the impugned cheque was presented. Pursuant to the dishonor of the impugned cheque, the procedure contemplated under the NI Act was duly followed and accordingly, the complaint came to be filed. In view of the same, there is a legally enforceable debt as against the impugned cheque and hence there is no illegality in the complaint.

6. I have given careful consideration to the submissions made by the respective counsels.

7. Before advertng to the submissions made by the respective counsels on the facts of the case, the legal position enunciated by the Hon'ble Apex Court in a series of decisions relating to the exercise of inherent powers of the High Court under Section 482 of the Criminal Procedure Code, places restrictions for intervention to pending criminal complaints. The Hon'ble Apex Court in Bajan Lal's Case (Supra) had formulated guidelines, for exercise of such powers under Section 482 of the Cr.P.C. A few of such guidelines for the purpose of this case, are when such a complaint does not prima facie constitute any offence when taken on their face value and accepted in its entirety; or the allegations and the evidence in support of the same do not disclose the commission of offence when the allegations in the complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused; or the criminal proceedings is maliciously instituted with an ulterior motive.

8. It is the submission of the learned counsel for the petitioner that the loan agreement dated 07.02.2018 is not an agreement at all and does not create a legally enforceable debt. It is his further submission that the allegations of a huge loan amount of Rs.1,30,000,00/- by way of cash is absurd and improbable.

9. The underlying principle for invoking the powers of the High Court under Section 482 Cr.P.C., would be to analyse as to whether such allegations could be so absurd or inherently improbable by which no just conclusion can be arrived for proceeding against the accused and as to whether such allegations could prima facie constitute an offence against the accused.

10. The issuance of the cheque by the petitioner herein is not disputed. Likewise, the procedure for instituting a complaint under Section 200 Cr.P.C., for an offence under Section 138 of the NI Act is also not questioned. The ground raised by the petitioner on absurdity or improbability touches upon the facts of the case. In other words, the issue as to whether the loan agreement dated 07.02.2018 relied upon by the respondent herein and whether a huge amount of Rs.1,30,000,00/- could be lent by way of cash, are matters which requires to be established by way of evidence and this Court, exercising its powers under Section 482 of the Criminal Procedure Code, will not be justified to draw an inference on these factual aspects. By applying the guidelines enunciated by the Hon'ble Apex Court in Bajan Lal's case (Supra), this Court is constrained to apply caution on drawing such an inference as to whether there is absurdity or improbability of an offence being committed under Section 138 of the NI Act.

11. Though the learned counsel for the petitioner had painstakingly drew the attention of this Court to the averments in the complaint as well as the documents filed along with the complaint, I am unable to come to a conclusion that such appreciation of the factual aspects will lead the case to an apparent conclusion to establish the innocence of the petitioner. The reliance on such portions of the averments in the complaint as well as the documents filed along with the complaint requires deliberations, which could only be substantiated during the course of trial.

12. I am consciously refraining myself from referring to the specific averments pointed out in the complaint as well as the documents since the same may have a bearing or may influence the trial Court during the course of such proceedings.

13. The learned counsel also relied upon the decisions of the Hon'ble Apex Court in Indus Airways Pvt. Limited's case

(supra) for the proposition that the impugned cheque was only given by way of security which cannot attract a liability to fasten the commission of an offence under Section 138 of the NI Act. The case in Indus Airways Pvt. Limited's case (supra) touches upon the terms of an MoU and in the background that the terms of the MoU was not acted upon at all, it was held that the security cheques will not create a debt or liability. Such are not the facts in the present case, but on the other hand, the averments in the complaint alleges that the impugned cheque was presented on the request of the petitioner herein for clearing the liabilities of the loan taken. Hence, the judgment cited by the learned counsel may not help him on this aspect.

14. This Court does not intend to quash the private complaint without subjecting the parties to face the trial. However, it is made clear that none of the observations made in the present order shall be cited as a precedent or even referred to, for rendering any finding by the trial Court either during the course of the proceedings or at the time of final hearing of the impugned complaint.

15. In the light of the above observations and findings, the Criminal Original Petition stands dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

DP
To

1.The Judicial Magistrate
Tambaram.

+1cc to Mr.S.Sivaraman, Advocate SR.89518

Crl.O.P.No.908 of 2019
and
Crl.M.P.No.588 of 2019

PM(CO)
CB(28/11/2019)