

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.O.P.No.21525 of 2013 and
M.P.No.1 of 2013

D.R.Prem Chandar

... Petitioner

Vs.

M/s.State Bank of India,
Woods Road Branch,
No.27-28, Woods Road BR Complex,
Mount Road, Chennai - 600 002.
Represented by its Chief Manager,
A.Sivagurunathan

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the entire records pertaining to the case in C.C.No.2585 of 2012 on the file of the learned XIII Metropolitan Magistrate, Egmore, Chennai, and quash the same.

For Petitioner : Mr.K.M.Balaji

For Respondent : Mr.O.Padmaprakash

ORDER

The respondent filed a private complaint under Section 200 of Cr.P.C. against the petitioner for the offence punishable under Section 138 of Negotiable Instruments Act (in short " the Act") before the learned XIII Metropolitan Magistrate, Egmore, Chennai. The learned Magistrate taken cognizance on the complaint in C.C.No.2585 of 2012 and issued summons on the petitioner. During pendency of the above case, the accused has filed this petition seeking to quash the same invoking Section 482 of Cr.P.C.

2 The learned counsel appearing for the petitioner would submit that in this case, provisions of Section 138 of the Act has not been complied with and mere dishonour of cheque is not an offence unless the knowledge of the same is proved. Even, notice has not been served on the petitioner since it has been addressed wrongly. The learned Magistrate failed to conduct

enquiry under Section 202 of Cr.P.C. Therefore in this case ingredients of Section 138 has not been made out and hence the present case against the petitioner is liable to be quashed.

3 The learned counsel appearing for the respondent would submit that the respondent/complainant has made averments in the complaint against the petitioner. All the defence taken by the petitioner/accused is a matter for trial. There is no reason to quash the case against the petitioner.

4 Heard the learned counsel appearing on either side and perused the materials available on record.

5 It is seen that the respondent/complainant has clearly stated in his complaint that the petitioner has availed mortgage loan of Rs.8,00,000/- from the respondent and issued a cheque for a sum of Rs.5,00,914/- in favour of the respondent and when the respondent presented the same for collection it was returned for the reason "insufficient funds" and hence he caused legal notice, which was returned with an endorsement 'Door Locked'. The learned counsel appearing for the petitioner has taken defence that notice was not served on the petitioner to the correct address and proceedings under Section 202 has not been initiated to decide jurisdiction. Whether notice served to the correct address or not is a matter for trial. The other defence regarding jurisdiction is concerned, due to subsequent development of judicial pronouncement, now all the complaints have been returned to jurisdictional Magistrate to conduct the case. Under these circumstances, this Court is not inclined to invoke power under Section 482 of Cr.P.C. and quash the case.

6 In the result, the criminal original petition is dismissed. Consequently connected miscellaneous petition is closed. However, the petitioner/accused is at liberty to raise all his defence before the trial Court.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

cgi

To

1.The XIII Metropolitan Magistrate, Egmore, Chennai.

2.Do Thro The Chief Metropolitan Magistrate
Emgore, Chennai

+1 CC to Mr.O.Padmaprakash, Advocate sr 105070.
+1 CC to Mr.K.M.Balaji, Advocate sr 105064.

Crl.O.P.No.21525 of 2013 and
M.P.No.1 of 2013

KK (CO)
SP (21/02/2020)



WEB COPY