IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.10.2018

DELIVERED ON : 22.03.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.Nos.17737 of 2007 and 3280 and 4435 of 2008

Samant Brara,
Proprietor,
M/s.Yuvraj Impex,
C-66/2, Gautam Nagar,
New Delhi. ...Petitioner in all Crl.O.Ps.

vs

1.S.K.Ravichandran ... 1st Respondent in Crl.O.P.No. 17737/2007 and
S/o.Kandasamy ... Respondent in Crl.O.P.No.3280/08

2.State represented by
Inspector of Police,
Erode Town Police Station,
Erode. ... 2nd Respondent in Crl.O.P.No. 17737/2007

(R2 impleaded as per order of this Court dated 20.06.2007 made in M.P.No.4/2007)

M/s.Sabari Texport,
No.9, Marappa 1st Street,
Erode -9, Erode Taluk,
Erode District, Tamil Nadu.
Represented by its
Managing Parnter,
S.K.Ravichandran,
S/o.Kandasamy ... Respondent in Crl.O.P.No.4435/08

Criminal Original Petitions filed under Section 482 Cr.P.C. praying to call for records in C.C.Nos.476 of 2006 and 222 of 2007 and C.M.P.No.8831 of 2007 on the file of learned Judicial Magistrate III, Erode and quash the same.

For Petitioner : Mr.AR.L.Sundaresan
senior counsel for AL.Gandhimathi

For Respondents : Mr.C.D.Johnson [R1]

COMMON ORDER

As the petitioner and respondent are common in all these petitions and the same question is raised for consideration, these petitions are disposed of by a common order.

2. Petitioner seeks quash of proceedings in C.C.Nos.476 of 2006 and 222 of 2007 and C.M.P.No.8831 of 2007 on the file of learned Judicial Magistrate III, Erode.

3. The brief facts of the case is as follows:

Crl.O.P.Nos.3280 and 4435 of 2008:

Respondent/complainant is doing business under the name and style 'Sabari Texport' in Erode and petitioner/accused is carrying on business under the name and style 'M/s.Yuvraj Impex' at New Delhi. Petitioner used to purchase textiles from respondent/complainant on various dates. As per the accounts statement of respondent, petitioner is liable to pay a sum of Rs.34,36,412/-for the period between 01.04.2004 and 10.08.2005. Towards part-payment, petitioner issued a post-dated cheque bearing No.266839 dated 02.05.2005 drawn on State Bank of Patiala, New Friends Colony, New Delhi, for Rs.5,00,000/-, which upon presentation has been returned unpaid for the reason 'Funds Insufficient'. Complainant issued statutory notice to the petitioner. Despite receipt of notice, petitioner has not taken any steps to pay the amount. Pursuant to a complaint u/s.138 of the Negotiable Instruments Act in C.C.No.483 of 2005 on the file of learned Judicial Magistrate, Erode, petitioner settled the amount by way of a Demand Draft and the case was dismissed as withdrawn on 26.04.2006. Petitioner agreed to pay a sum of Rs.24,00,000/- towards entire balance and issued the following cheques drawn on Punjab National Bank, Green Park, New Delhi:

Cheque No.	Dated	Amount
269284	23.04.2007	6,00,000/-
269285	03.05.2007	6,00,000/-
269286	13.05.2007	6,00,000/-
269287	23.05.2007	6,00,000/-

When the cheques were presented for collection, all the cheques were returned unpaid for the reason 'payment stopped by the drawer'. Respondent/complainant issued statutory notice, for which petitioner has sent a reply with frivolous and false allegations. In respect of cheque Nos.269284 and 269285, a complaint came to be filed in C.C.No.222 of 2007 on the file of learned Judicial Magistrate III, Erode, which gives rise to Crl.O.P.No.3280 of 2008. In respect of cheque Nos.269286 and 269287, another complaint in Crl.M.P.No.8831 of 2007 has been filed with a delay of 10 days, which gives rise to Crl.O.P.No.4435 of 2008.

Crl.O.P.No.17737 of 2007:

First respondent/complainant preferred a complaint informing that petitioner approached him, requested to dispatch textiles and has also undertaken to make payment in monthly instalments. Believing his words, complainant dispatched textile articles, as per the purchase order, through several invoices of value of Rs.38,36,356/-. Initially, petitioner paid Rs.4,00,000/- by way of Demand Draft and issued a cheque for Rs.5,00,000/-, which, upon presentation was returned unpaid for the reason 'Funds Insufficient'. Despite repeated demands, petitioner has not chosen to effect payment. While so, on 28.05.2005 at about 07.00 p.m., petitioner along with 5 other persons visited the office of first respondent and threatened him to do away with him if he dares to make any claim for payment. On the complaint of first respondent, a case in Crime No.628/2015 on the file of second respondent for offences u/s.420, 120 and 506(ii) IPC has been filed against the petitioner. On completion of investigation, a charge sheet came to be filed in C.C.No.476 of 2006 on the file of learned Judicial Magistrate III, Erode.

4. Heard learned senior counsel for petitioner, learned counsel for first respondent and learned Government Advocate.

5. Learned senior counsel for petitioner submitted that the petitioner lodged a complaint before police at New Delhi on 17.04.2007 at about 11.00 a.m. Six police men claiming themselves to be from Karungapalayam Police Station came to the petitioner's office at G-66/2, Gautam Nagar, New Delhi, accompanied by accused persons K.G.Senthil Kumar, N.Nagenthiren, Ramesh and Balaji of M/s.Sabari Texport with whom the petitioner had business dealings around two or three years back. The Sub-Inspector of Police Syed Babu accompanied by Deputy Superintendent of Police, Kalayamurthi, informed the petitioner that the police men came to arrest the petitioner in connection with the complaint lodged by K.G.Senthil Kumar and S.K.Ravichandran. Further, the police men putting a revolver on the petitioner's forehead, threatened him to settle the amount with K.G.Senthil Kumar failing which the petitioner would be arrested. The police men along with K.G.Senthil Kumar and N.Nagenthiren coerced the petitioner to enter into a settlement deed which was anti-dated to 15.04.2007 and post dated cheques were taken under extortion and criminal intimidation. Having no other option, petitioner was forced to give post-dated cheques

and anti-dated settlement deed. Further, letters from Atul Kapoor and Vijay, Accountant of petitioner, were also obtained. Petitioner has also taken photographs which would depict the first respondent's presence during extortion and taking of the cheques in a forced manner. Learned senior counsel submitted that the above would clearly reveal that the cheques were not issued in discharge of any liability. Police acting on behalf of first respondent had not informed the Station House Officer before visiting the petitioner's office as mandated under the Criminal Procedure Code and hence, first respondent is accused of offences punishable u/s.387, 147, 148, 149, 506, 120-B and 34 IPC. As no action was taken on the complaint of petitioner, he has filed an application u/s.156(3) Cr.P.C. and upon the direction of learned Metropolitan Magistrate, Saket Courts, New Delhi, a case came to be registered in Crime No.226 of 2007 for offences u/s.387, 506, 120-B and 34 IPC. Upon completion of investigation, a closure report has been filed and the same was accepted under orders dated 16.12.2016. Challenging the same, petitioner has filed a revision before the District and Sessions Judge, Saket Courts, New Delhi and the same is at the stage of arguments. Learned senior counsel submitted that the Apex Court in the decision in Rangappa v. Mohan [AIR 2010 SC 1898] has held that it is a settled position that when an accused has to rebut the presumption u/s.139, the standard of proof for doing so is that of preponderance of probabilities. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, prosecution can fail. Relying on such judgment, learned senior counsel submitted that if the petitioner succeeds in the revision, the initial presumption u/s.139 of the Negotiable Instruments Act has been rebutted and hence, there would be no liability and the petitioner need not undergo the ordeal of trial for ofence u/s.138 Negotiable Instruments Act. Insofar the criminal case is concerned, it is submitted that in the decision in Hridaya Ranjan Pd. Verma and Ors. v. State of Bihar and Ors. [AIR 2000 SC 2341], the Apex Court has held that in determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. The judgment of Apex Court in Anil Mahajan v. Bhor Industries Ltd. and Ors. [2005 (10) SCC 228] is also relied upon. Learned senior counsel submitted that no offence u/s.506 IPC is made out as the ingredients of criminal intimidation are mentioned in Section 503 IPC. The purpose of first respondent is only to made the petitioner to settle the amount of Rs.24,00,000/- covered in the 4 cheques which were obtained by force and extortion. Submitting as above, learned senior counsel prayed for allowing the petitions.

6. Learned counsel for first respondent submits that the first respondent and petitioner had been carrying on the business for quite sometime and first respondent had dispatched textiles to the petitioner under invoices. The total due is Rs.34,26,412/- and the petitioner paid an amount of Rs.5,00,000/- in C.C.No.483 of 2005 on 26.04.2006. If really the petitioner has no liability, then there was no necessity for him to pay Rs.5,00,000/-. In order to give a quietus to the dispute only, petitioner has issued the subject cheques as also entered into an agreement in the presence of his employees. First respondent has supplied materials on credit basis taking into consideration the urgent need of the respondent. However, petitioner, with a view to evade payment, has preferred a false complaint before the New Delhi police, which has been closed as 'mistake of fact' and the same has also been accepted by the learned Magistrate. Pendency of revision will not affect and hinder the progress in the case. Submitting as above, learned counsel prayed for dismissal of the petitions.

7. Learned Government Advocate for the second respondent submitted that upon completion of investigation, a charge sheet came to be filed against the petitioner and as there are sufficient materials to proceed against the petitioner, he has to prove his innocence during trial. Submitting as above, learned Government Advocate prayed for dismissal of the quash petitions.

8. This Court has considered the rival submissions.

9. On a perusal of materials, this Court finds that Crl.O.P.Nos.3280 and 4435 of 2008 pertains to offence u/s.138 of the Negotiable Instruments Act and for more than 12 years, the trial in the case could not be proceeded with owing to pendency of the above said petitions. The purpose of Negotiable Instruments Act itself would be defeated. This Court finds that there are enough materials to proceed against the petitioners. It is open to the petitioners to raise all defence available to them during trial.

10. Insofar as Crl.O.P.No.17737 of 2007 is concerned, this Court finds that the petitioner cannot take shelter under the criminal revision case pending before the Sessions Court at New Delhi to stall the proceedings in C.C.No.222 of 2007 on the file of learned Judicial Magistrate III, Erode.

In the result, the Criminal Original Petitions are dismissed. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

To

The Judicial Magistrate III, Erode.

+1cc to Mr.C.D.Johnson, Advocate SR.No.27371

+3cc to Mr.AL.Ganthimathi, Advocate SR.No.28089

Crl.O.P.Nos.17737 of 2007 and 3280 and 4435 of 2008

KS(CO)
GMY(29/04/2019)