

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.3374 of 2013
and
M.P.No.1 of 2013

AT.KR.Nagappan

... Petitioner/Accused

Vs.

Smt.AR.Devaky

... Respondent/Complainant

PRAYER:

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the private complaint filed by the respondent herein in C.C.No.230 of 2012 for an offence under Section 138 of the Negotiable Instruments Act on the file on the XXIII Metropolitan Magistrate (Fast Track Court-III), Saidapet, Chennai.

For Petitioner : Ms.V.Anuradha

For Respondent : Mr.Shahjahan

O R D E R

Criminal Original Petition filed to call for the records and quash the private complaint filed by the respondent in C.C.No.230 of 2012 for an offence under Section 138 of the Negotiable Instruments Act on the file on the XXIII Metropolitan Magistrate (Fast Track Court-III), Saidapet, Chennai.

2.The petitioner is the accused in C.C.No.230 of 2012 pending on the file of the XXIII Metropolitan Magistrate Fast Track Court No.III, Saidapet, Chennai - 600 015. The private complaint came to be lodged by the respondent/complainant for the offence under Section 138 of the Negotiable Instruments Act.

3.As per the complaint, the petitioner is known to the respondent and availed a loan of Rs.16,00,000/- (Rupees sixteen lakh only). While availing the loan the petitioner had executed a promissory note and also deposited his property document situated at Sivaganga and assured to repay the said loan on or

before 30.04.2011. Thereafter, Memorandum of Understanding was entered between the petitioner and the respondent on 11.11.2010 and acknowledged the debts and liabilities and the petitioner had issued post dated cheque bearing No.962283 dated 30.04.2011 drawn on Standard Chartered Bank, Rajaji Salai Branch, Chennai for a sum of Rs.10,00,000/- Rupees ten lakh only). The said cheque was deposited with the respondent bank viz., Bank of India, K.K. Nagar Branch, Chennai - 600 078 and the same was returned unpaid for the reason "Funds Insufficient". Thereafter, statutory notice was issued on 21.11.2011 to the accused. On receipt of the notice, the petitioner neither paid the cheque amount nor sent any reply. Thereafter, the complaint came to be registered.

4.The contention of the petitioner is that the petitioner's property which has been given as security to the loan is still with the respondent/complainant and as per the Memorandum of Understanding, the cheque was given only as a security and the disputes between them are resolved through arbitration. He further submitted that no amount has been paid by him, hence, the liability for which the cheque has been issued has not been discharged. Further, having an arbitration clause will not stop the respondent to proceed against the petitioner in a case filed under Section 138 of the Negotiable Instruments Act.

5.The learned counsel appearing for the respondent submits that already PW1 has been examined and the chief examination is completed in this case and suppressing the same at the stage of cross examination the petitioner herein filed the above quash petition before this Court.

6.In view of the same, this Court finds no merit in the contention of the petitioner. Hence, this Criminal Original Petition stands dismissed. The case is of the year 2012. Since the complaint has been filed and kept in abeyance without any progress. The Trial Court is directed to complete the trial and conclude the case, within a period of two months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

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To

The XXIII Metropolitan Magistrate
(Fast Track Court-III),
Saidapet, Chennai.

+1cc to Mr.Shahjahan, Advocate, S.R.No.47426

Cr1.O.P.No.3374 of 2013

NR (CO)
CS/31/07/2019



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