IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.Nos.6892, 6893 and 6894 of 2018
and
Crl.M.P.Nos.3540, 3541, 3542, 3543, 3544 and 3545 of 2018

S.K.Jayaprakash ..Petitioner in all Crl.O.Ps.

-vs-

T.M.Unnikrishnan ..Respondent in all Crl.O.Ps.

PRAYER in Crl.O.P.No.6892 of 2018 : Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the entire records in S.T.C.No.234 of 2017 pending on the file of learned Judicial Magistrate, Tambaram and quash the entire proceedings in the interest of justice.

PRAYER in Crl.O.P.No.6893 of 2018 : Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the entire records in S.T.C.No.235 of 2017 pending on the file of learned Judicial Magistrate, Tambaram and quash the entire proceedings in the interest of justice.

PRAYER in Crl.O.P.No.6894 of 2018 : Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the entire records in S.T.C.No.3223 of 2017 pending on the file of learned Judicial Magistrate, Tambaram and quash the entire proceedings in the interest of justice.

For Petitioner : Mr.R.Vijayakukmar

For Respondent : Mr.K.Devi
for M/s.K.Shivakumar

(in all Criminal Original Petitions)

COMMON ORDER

These Criminal Original Petitions have been filed to quash the complaint initiated by the respondent for an offence under Section 138 of Negotiable Instruments Act. The allegations in all the three complaints indicates that the petitioner had issued the cheque in the month of March, 2016, towards the liability incurred by borrowal of an amount and this cheque was presented in the month of June, 2016 and the same was returned with an endorsement "payment stopped". Subsequently, a legal notice was issued and a reply was sent by the petitioner and the complaints came to be filed before the Court below.

2.The learned counsel for the petitioner submitted that the complaint itself is an abuse of process of Court. Inorder to substantiate his submissions, the learned counsel brought to the notice of this Court the paper publication that was made on 29.08.2015 by the petitioner to the effect that three cheques belonging to the petitioner had been lost and had put the public on notice to hand over the cheques, if it is found. Subsequently, during November-2015 a legal notice was issued to the respondent informing him that the cheques have been stolen from the petitioner and directing him not to misuse the cheques and to return back the cheques. This legal notice was also received and acknowledged by the respondent. Thereafter, the petitioner had issued "payment stopped" instructions to the bank during February-2016. The petitioner proceeded to file a suit against the respondent in O.S.No.150 of 2016 during the month of March, 2016 seeking for the relief of mandatory injunction directing the respondent to hand over the cheque and for a permanent injunction restraining the respondent from misusing the cheque.

3.The learned counsel for the petitioner further submitted that the respondent proceeded to also give a police complaint during April, 2016 against the petitioner as if the petitioner had given the "stop payment" instructions to the bank only with an intention to cheat the respondent. The complaint was taken on file and a First Information Report also came to be registered by the Shankarnagar Police Station, St.Thomas Mount, Chennai, in Crime No.1276 of 2016.

4.The learned counsel for the petitioner by pointing out to all the above facts submitted that the allegations, as may in the complaint, is totally unbelievable, since petitioner could not have directed the respondent to present the cheque for collection after the paper publication, legal notice, "stop payment" instruction and the suit filed in O.S.No.150 of 2016. The learned counsel submits that the respondent has also filed a counter in this case, almost accepting the entire facts and therefore this Court can take note of all these documents about which there is no dispute. Therefore, the learned counsel submits that the criminal proceedings initiated by the respondent is an abuse of process of Court and the same requires interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

5.Ms.K.Devi, learned counsel for the respondent submitted that the petitioner is known to the respondent and they are close family friends for more than 15 years. The respondent had believed the petitioner and had lent a sum of Rs.22,00,000/- (Rupees Twenty Two Lakhs only) during various dates from the year 2013 to 2015. It is only towards this liability, the petitioner had issued three post-dated cheques. The learned counsel further submitted that the petitioner also executed a promissory note. The learned counsel brought to the notice of this Court the various averment made in the counter affidavit filed by the respondent and submitted that it is only on the request made by the petitioner, the cheques were presented for collection and the same was dishonoured on the ground of "stop payment".

6.The learned counsel appearing for the respondent further submitted that the issue that have been raised in all these petitions are factual in nature and this Court cannot go into the issue at this point of time and the same has to be decided only by the Court below in the course of the proceedings. Therefore, the learned counsel submitted that all these petitions are liable to be dismissed and this Court can fix some time for the completion of the proceedings.

7.This Court has carefully considered the submissions made on either side and the materials available on record. It is true that this Court has a very limited jurisdiction under Section 482 of Cr.P.C., while considering a petition to quash the criminal proceedings.

8.This Court is not expected to conduct an enquiry and this Court has to necessarily go by the allegations made in the complaint and the documents filed along with the complaint. The only exception that has been given by the Hon'ble Supreme Court in this regard is, where there are materials available and which are sterling and unimpeachable in quality. If there are any such materials, the same can be considered by this Court while exercising its jurisdiction under Section 482 of Cr.P.C.

9.In the present case, the documents that have been relied upon by the petitioner are the paper publication that was given during the month of August, 2015, legal notice that was issued to the respondent during the month of November, 2015 and the acknowledgement card, "stop payment" instructions given to the bank during February-2016, copy of the plaint filed in O.S.No.150 of 2016 during the month of March, 2016 and the First Information Report that was registered on the basis of the complaint given by the respondent in crime No.1276 of 2016. There is absolutely no dispute with regard to these documents and it has, in fact, been admitted by the respondent in the counter filed before this Court. These materials are of sterling quality and unimpeachable and there is no dispute regarding the same.

10.In view of the above finding, this Court has to see whether the allegations made in the complaint can be believed by taking into consideration the sequence of events that have been taken place before the filing of the complaint. The respondent has not stated anything regarding the paper publication or the legal notice or the suit filed by the petitioner or the complaint given by him before the respondent police, in his complaint filed before the Court below. In the police complaint which was given by the respondent on 25.04.2016, he has specifically mentioned about the three cheques and the fact that it was dishonoured on the ground of "stop payment". After the case had reached the police station during the month of April, 2016, it is completely unbelievable that the petitioner would have again given instructions to the respondent to present the cheque during June, 2016. This conduct of the respondent is very unnatural and the common course of natural events and this conduct does not permit this Court to believe the allegations made in the complaint. This is more so, due to the fact that the respondent has consciously concealed the earlier events in his complaint.

11.As rightly argued by the learned counsel for the petitioner, when the cheques were presented in March, 2016 and was dishonoured and the same resulted in the police complaint in crime No.1276 of 2016, it is impossible that the petitioner would have against requested the respondent to present the cheques during June, 2016.

12.In view of the above discussion, this Court is of the considered view that the entire proceedings is an abuse of process of Court. The respondent had clearly misused the availability of the cheques and more particularly, after he knew that the petitioner had already issued a legal notice, filed a suit against the misuse of cheques and had also given "stop payment" instructions to the bank as early as February, 2016. This Court has no hesitation to interfere with the proceedings initiated against the petitioner and the same has to be done to secure the ends of justice.

13.In the result, the proceedings in S.T.C.Nos.234 and 235 of 2017 and S.T.C.No.3223 of 2017, pending on the file of learned Judicial Magistrate, Tambaram, are hereby quashed and these Criminal Original Petitions are allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate,
Tambaram.

2.The Public Prosecutor,
Madras High Court.

+3 cc to M/s.R.Vijayakumar,Advocate Sr.Nos. 72255 to 72257
+3 cc to M/s.K.Shivakumar, Advocate Sr.Nos.72292 to 72294

AKM/26.09.19/5P-9C /

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