IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.17317 of 2018 and
Crl.M.P.No.8962 of 2018

M.Suresh Kumar ... Petitioner

Vs.

C.T.Karuppaiah ... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in C.C.No.236 of 2018 on the file of the Judicial Magistrate, Fast Track Court Magisterial Level, Ambattur, Chennai and quash the same insofar as the petitioner.

For Petitioner : Mr.G.M.Ravichandran
for Mr.C.Veeraraghavan

For Respondent : Mr.R.John Sathyan

ORDER

This petition has been filed to quash the proceedings in C.C.No.236 of 2018 on the file of the learned Judicial Magistrate, Fast Track Court Magistrate Level, Ambattur, Chennai, having been taken cognizance for the offences under Section 138 of Negotiable Instruments Act, as against the petitioner.

2. The learned counsel for the petitioner submitted that the respondent initiated proceedings for the offence punishable under Section 138 of Negotiable Instruments Act as against the petitioner. The crux of the complaint is that the petitioner borrowed a sum of Rs.10 lakhs from the complainant on two different dates in the month of January and September 2017 respectively. The petitioner issued a cheque for a sum of Rs.10,00,000/- by the cheque bearing No.994021 dated 01.02.2018. It was presented for collection and the same was returned with an endorsement 'payment stopped by drawer'. Thereafter the

respondent issued statutory notice and initiated proceedings under Section 138 of Negotiable Instruments Act.

2.1. The learned counsel for the petitioner further submitted that the petitioner never borrowed any amount from the respondent and as such there is no legally enforceable debt as payable by the petitioner. The learned Magistrate without seeing that there is no legally enforceable debt has taken cognizance mechanically. He further submitted that the petitioner issued stop payment letter on 01.09.2016 to his banker namely Karur Vysya Bank, Pollachi Branch thereby stopping honour of the cheques bearing Nos.994021 to 994030 for the reason that the cheques were handed over to a Financial Institution, namely, M/s.Ashtalakshmi Auto Investment Finance for the loan obtained by his father as security purpose. Thereafter his father settled the entire payment to the finance company, but the finance company did not return the said cheques. When the petitioner and his father questioned about the same, one of the partners of the finance company, Mr.S.Subramanian informed that there was a dispute between the partners and as such whereabouts of those cheques were not known and assured that those cheques would not be deposited for collection. Even then, by abundant caution, the petitioner issued a stop payment letter to the banker and it was also clearly recorded in the statement of accounts of the petitioner. Even then, his father issued notice to one of the partners of the company, namely Mr.S.Subramanian calling upon him to return the cheques and documents executed while borrowing loan by him and also specifically mentioned the cheques which were given as security at the time of borrowing loan.

2.2. He further submitted that the said notice was also marked to one, Mr.P.Jayavel, one of the partners of the finance company. While being so, to the petitioner's shock and surprise he received statutory notice under Section 138 of Negotiable Instruments Act dated 26.02.2018 for the cheque bearing No.994021 as if it was issued for the loan borrowed by the petitioner from the respondent. Immediately by the reply notice dated 10.03.2018 the petitioner replied that the respondent is a stranger to him and he is no way connected with the petitioner. Further he stated that he never borrowed any loan from the respondent.

2.3. He further submitted that in fact, he specifically stated in the reply notice that he already issued stop payment letter to his banker and also his father issued notice to one of the partners of the finance company to return the said cheques and other documents which were received at the time of borrowing loan by the petitioner's father. After receipt of the same, the respondent did not send any rejoinder and filed the impugned proceedings under Section 138 of Negotiable Instruments Act. Therefore, the impugned cheque was not at all issued for any legally enforceable debt and on mere presumption, the learned Magistrate ought not to have take cognizance as against the petitioner. In this regard, the learned counsel for the petitioner has relied upon the judgments in the case of Karthik V.R.Thondaiman Vs. R.M.Karthikeyan reported in 2018 (3) MWN (Cr.) DCC 63 (Mad.) and in the case of Meena V.R.Thondaiman Vs. K.Amuthavalli reported in 2018 (3) MWN (Cr.) DCC 113 (Mad.)

3. Per contra, the learned counsel for the respondent submitted that the petitioner borrowed a sum of Rs.10 lakhs on two occasions and to repay the said amount the respondent issued a cheque. On instructions it was presented for collection and the same was returned for the reason 'payment stopped by drawer'. Thereafter, the respondent caused statutory notice for which the petitioner replied with false and frivolous particulars. Therefore he initiated proceedings under Section 138 of Negotiable Instruments Act and the learned Magistrate after conducting enquiry and having been satisfied have taken cognizance as against the petitioner. He further submitted that the points raised by the petitioner are question of facts and cannot be considered by this court under Section 482 Cr.P.C. All these points can be canvassed only before the trial court during the trial. Therefore, he prayed for dismissal of this quash petition.

4. Heard, the learned counsel for the petitioner and the learned counsel for the respondent.

5. The respondent initiated proceedings for the offence punishable under Section 138 of Negotiable Instruments Act against the petitioner on the allegation that the petitioner borrowed a sum of Rs.10 lakhs and to repay the same, he issued a cheque bearing No.994021 dated 01.02.2018 for a sum of Rs.10 lakhs. It was presented for collection and the same was returned dishonoured with the endorsement 'payment stopped by drawer'. After causing statutory notice, he initiated the impugned proceedings as against the petitioner.

6. It is seen from the notice issued by the father of the petitioner that the petitioner's father borrowed loan from a Financial Institution, namely, M/s.Ashtalakshmi Auto Investment Finance, and for the security purpose he handed over the signed blank papers and the cheques belong to the petitioner bearing Nos.994021 to 994031 from the savings account No.1181155000056941, Karur Vysya Bank, Pollachi Branch to the financier. After repayment of the entire amount, he called upon a partner of the finance company to return those cheques and other documents etc on 10.09.2016. In fact, on 01.09.2016 itself, the petitioner issued a letter to stop payment on the

cheques bearing Nos.994021 to 994031 to his banker, namely the Manager, Karur Vysya Bank, Pollachi Branch. It is also reflected in the statement of accounts of the petitioner on 01.09.2016. Thereafter the petitioner received statutory notice from the respondent dated 26.02.2018 for the very same cheque bearing No.994021 drawn on Karur Vysya Bank, Pollachi Branch. The petitioner replied by his reply notice dated 10.03.2018 and categorically stated that the respondent is a stranger and he never borrowed any loan from the respondent and the cheque was already issued as security to the financier to obtain loan by his father. It is also mentioned that the petitioner already issued stop payment letter to his banker in respect of the alleged cheque. The said reply notice was duly received by the respondent and the respondent had not chosen to sent any rejoinder to the reply notice.

7. Admittedly, the petitioner issued letter to stop payment for the impugned cheque on 01.09.2016 and his father issued legal notice on 10.09.2016. After a period of two years, the impugned cheque was presented for collection by the respondent. Therefore, the cheque was not issued for any legally enforceable debt payable by the petitioner. It is also seen that the respondent is no way connected with the petitioner and the impugned cheque was handed over by his father as security at the time of borrowal of loan from the finance company.

8. The learned counsel for the petitioner has cited the judgment of this Court in the case of Karthik V.R.Thondaiman Vs. R.M.Karthikeyan reported in 2018 (3) MWN (Cr.) DCC 63 (Mad.), wherein it is held as follows:

> "8.It is also seen that even as per the case of the respondent that on 02.04.2004, the petitioner and his mother borrowed a sum of Rs.40,00,000/- on execution of registered mortgage deed of their properties in favour of the respondent and his wife. Without repaying the said loan, again on 02.05.2007, the petitioner borrowed a sum of Rs.7,00,000/-. Admittedly, the petitioner and his mother issued notice on 22.11.2005 as stated above and after receipt of the same, the respondent and his wife also replied through reply notice dated 02.12.2005. Be that as it may, it is impossible to lend loan for a sum of Rs.7 lakhs on 02.05.2007 to the petitioner. It is also unbelievable one. Again, it can be construed that the alleged cheque was already obtained for the purpose of security, while borrowing the loan in the year 2003 and 2004. That apart in the said notice dated 22.11.2005, the petitioner and his mother specifically averred the cheque particulars and pronotes obtained by the respondent

herein. Therefore, the present complaint is nothing but abuse of process of law.

9.The learned counsel appearing for the respondent would rely upon the judgment reported in 2015(2) CTC 446 ? HMT Watches Ltd. V. M.A.Abida and (2016) 10 Supreme Court Cases 458 ? Sampelly Satyanarayana Rao V. Indian Renewable Energy Development Agency Ltd., wherein, the Hon'ble Supreme Court held that quashing of criminal complaint on disputed question of facts under Section 482 of Cr.P.C. is unwarranted and it has to be gone into by full fledged trial by the trial Court. Further, it has been held that the post dated cheques described as 'security' towards repayment of instalment of already disbursed loan amount, proceeding under Section 138 of N.I. Act is maintainable, in case of dishonour of such cheques.

10.It is seen from the facts and circumstances of this case, though it is disputed questions of facts, from seeing the notice dated 22.11.2005 and the reply notice dated 02.12.2005, it is clear abuse of process of law. Therefore, the above judgments cited by the learned counsel appearing for the respondent are not applicable to the present case on hand. That apart, the alleged cheques were not issued for any legally enforceable debt. It is also proved from the notice dated 22.11.2005 that the said alleged cheques and other pronotes were obtained by the respondent/complainant at the time of borrowal of loan in the year 2003 and 2004. Therefore, the alleged cheques were not issued by the petitioner for any legally enforceable debt. In such circumstances, the petitioner cannot be subjected to ordeal trial. Therefore, the complaint cannot be sustained and it is liable to be quashed."

9. The above judgment is squarely applicable to the case on hand. In this case also the alleged cheque was not issued for any legally enforceable debt to the respondent. In fact, the petitioner is no way connected to the respondent and he is a stranger to the petitioner. Therefore, the petitioner has no liability and the cheque was not issued for any legally enforceable debt. Therefore, the present complaint is sheer abuse of process of law and it cannot be sustained as against the petitioner and it is liable to be quashed.

10. Accordingly this criminal original petition is allowed and the proceedings in C.C.No.236 of 2018 on the file of the Judicial Magistrate, Fast Track Court Magisterial Level,

Ambattur, Chennai is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

The Judicial Magistrate,
Fast Track Court Magisterial Level,
Ambattur, Chennai

+1 cc to Mr.C.Veeraraghavan, Advocate, Sr.No. 36455

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PM(CO)
CSL/24.06.2019