

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 16.04.2019

CORAM
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.10291 of 2019
and
Crl.M.P.Nos.5329, 5330 of 2019

1.M/s.Noorul Islam Trust,
Rep by its Trustees,
Having Registered Office at
Peerumpillichira P.O.,
Thodupuzha,
Idukki District, Kerala 685 605.

2.K.M.Moosa
3.P.M.Rajeena
4.K.M.Mijas

... Petitioners

Vs

M/s.Central Bank of India,
Rep by its Chief Manager,
Mr.Ujjal Kumar Moitra,
Mid Corporate Branch,
Montieth Road, Egmore,
Chennai 600 008.

.... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records relating to the complaint in C.C.No.4917 of 2017 and quash the same pending on the file of the II Fast Track Court, Allikkulam, Egmore, Chennai in the interest of Justice.

For Petitioners : Mr.P.Prakash Paul

ORDER

This petition has been filed to quash the proceedings in C.C.No.4917 of 2017 and quash the same pending on the file of the II Fast Track Court, Allikkulam, Egmore, Chennai.

2.The learned counsel for the petitioners submits that the petitioners are no way connected with the alleged cheques. He further submitted that there is no specific allegations as against the each of the petitioners and did not whispered about their involvement in the day to day affairs of the first petition trust. Therefore the complaint cannot be sustained as against the petitioners. The respondent/complainant has no jurisdiction to lodge present impugned complaint, since no

authorized person filed the present complaint and it has been mechanically filed in the name of the bank. He further submitted that the impugned cheque has been given as security at the time of borrowal of loan and the petitioners never instructed the respondent bank to deposit the same. Therefore, the offence under Section 138 of Negotiable Instruments Act, would not attract as against the petitioners. In fact, in the statutory notice the respondent did not disclose any outstanding due by the petitioners. He further submitted that the respondent initiated proceedings under SURFAESI Act and as such, the present proceedings under Section 138 of Negotiable Instruments Act is not maintainable. There is a security asset available for the outstanding loan and as such the proceedings under Section 138 of Negotiable Instruments Act is nothing but arm twisting method to extract more money from the petitioners. Therefore, he prayed for quashment of the present proceedings.

3.It is seen from the records, the respondent issued statutory notice under Section 138 of Negotiable Instruments Act to the petitioner and on receipt of the same, the petitioners issued reply notice dated 23.05.2016, which reads as follows :

"We are in receipt of the above referred notice sent by you under Section 138 of the Negotiable Instruments Act and in this regard we are sending the following reply notice to you. It is true we have issued the cheque as stated in the notice at a time when we were not having funds for the remittance of the amount due in the said loan account. The cheque was issued the expectation that funds could be arranged on the date of the cheque. But due to the financial stringency we could not arrange funds in the account as agreed with your client Bank.

We have no intention to commit the offence as stated in your notice. We regret for the inconvenience caused to the Bank due to the dishonor of the said cheque. We need two months time for payment of the amount covered by the cheque.

Hence, we request to kindly grant two months time for payment of the amount covered by the cheque and legal proceedings may not be initiated against us as stated in the notice."

4.Though so many grounds raised by the petitioners herein in the quash petition, they did not even whisper about any one of the adverse statement in their reply notice dated 23.05.2016.

In the said reply notice, the petitioners admitted their liability and requested the respondent for two months time to settle the cheque amount. The petitioners further requested the respondent did not initiate any action as called upon under the statutory notice. Therefore, the present quash petition is nothing but clear abuse of process of Court and it is liable to be dismissed.

5. Accordingly, this Criminal Original Petition is dismissed. However, considering the year of the case is 2017, the trial Court is directed to complete the trial proceedings within a period of six months from the date of the receipt of a copy of this Order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

rna

To

The Metropolitan Magistrate,
II Fast Track Court,
Allikkulam, Egmore,
Chennai.

Crl.O.P.No.10291 of 2019
and

Crl.M.P.Nos.5329, 5330 of 2019

SPD (CO)

RRS (29/05/2019)

सत्यमेव जयते

WEB COPY