

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.529 of 2019
and
Crl.M.P.Nos.7239 & 7240 of 2019

D.Prabhu,
Proprietor ABC Exports,
No.18/1, Saurashtra Nagar,
2nd street, Choolaimedu, Chennai. ... Petitioner/Accused

Vs.

S.P.Vijayakumar,
S/o.Subramanian,
No.11, Father Randy Street,
R.S.Puram, Coimbatore. ... Respondent/Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C.,
to call for the records relating to the impugned order dated
05.03.2019 passed in C.M.P.No.13250 of 2019 in C.C.No.15 of 2018
on the file of the Judicial Magistrate Court-II (FTC-at
Magisterial Level), Coimbatore and to set aside the same.

For Petitioner : Mr.K.N.Nataraj

ORDER

This criminal revision has been preferred seeking to set
aside the order dated 05.03.2019 passed in C.M.P.No.13250 of
2019 in C.C.No.15 of 2018 on the file of the Judicial Magistrate
Court (FTC-II), Coimbatore and to call for the records in the
said petition.

2. For the sake of convenience, the parties will be referred
to by their name.

3. It is the case of Vijayakumar (complainant) that Prabhu
(accused) borrowed a total sum of Rs.50,00,000/- on various
dates, towards which, he repaid certain amounts and a balance
sum of Rs.35,00,000/- was due. Towards the sum of
Rs.35,00,000/-, Prabhu issued a cheque dated 23.11.2017 bearing

No.026936 in favour of Vijayakumar. Vijayakumar presented the cheque and the same was returned on 24.11.2017 with the endorsement "Funds Insufficient". Vijayakumar issued a demand notice dated 02.12.2017 to Prabhu, for which, Prabhu issued a reply notice dated 18.12.2017, repudiating the debt. Hence, Vijayakumar has filed a complaint in C.C.No.15 of 2018 before the learned Judicial Magistrate - II, Fast Track Court, Coimbatore, under Section 138 of the Negotiable Instruments Act, 1881, (for brevity "the NI Act") against Prabhu. On receipt of summons, Prabhu entered appearance and filed Crl.M.P.No.13250 of 2019 in C.C.No.15 of 2018 under Section 245 Cr.P.C. for discharging him from the prosecution, which has been dismissed by the trial Court, by the impugned order dated 05.03.2019, challenging which, Prabhu is before this Court.

4. Heard Mr.K.N.Nataraj, learned counsel for Prabhu who submitted that even according to the averments in the complaint, a major amount has been paid by Kavitha, Vijayakumar's sister and Muthuvel, Vijayakumar's brother-in-law and therefore, there is no privity of contract between Vijayakumar and Prabhu, inasmuch as there is no subsisting debt vis-a-vis Vijayakumar. Reliance was placed on the judgment of the Supreme Court in A.C.Narayanan and others Vs. State of Maharashtra and others [2015 (1) CTC 853] and the judgment of the learned Single Judge of this Court in Sulochana Sampooranam Vs. M.Kulasekaran [2003 CJL 4373], for the proposition, that a petition for discharge is maintainable before the Trial Court.

5. This Court gave its anxious consideration to the submissions of the learned counsel for Prabhu.

6. A bare reading of Section 138 of the NI Act, would show that if a person issues a cheque in discharge of any debt and if the cheque bounces, he is liable for prosecution under Section 138, ibid.

7. In this case, admittedly, Vijayakumar's sister Kavitha and brother-in-law Muthuvel gave Rs.22,50,000/- and Rs.17,00,000/-, respectively, to the accused separately. Apart from that, Vijayakumar has given Rs.5,50,000/- and Rs.4,50,000/- on 16.08.2017 and 17.08.2017, respectively. Thus, the total amount that is due to the family of Vijayakumar is Rs.50,00,000/-. In the complaint, Vijayakumar has admitted that the accused has repaid a sum of Rs.15,00,000/-. According to Vijayakumar, the total balance that is due from the accused is Rs.35,00,000/- and towards the sum of Rs.35,00,000/-, the accused has given the cheque in favour of Vijayakumar. Therefore, it is not open for the accused to say that the cheque was not issued in discharge of debt. In Section 138 of the NI Act, the expression that is used is "any debt". The NI Act does

not say that the prosecution under Section 138 of the NI Act is maintainable only if the cheque is given towards the debt owed to the complainant. The expression "any debt" would include the debt of the accused to the complainant's sister and brother-in-law.

8. As regards the contention of the learned counsel for Prabhu that the discharge application is maintainable, the issue is no longer res integra, in view of the judgment of the Supreme Court in Indian Bank Association vs. U.O.I. [(2014) 5 SCC 590], wherein, guidelines were issued as to how a complaint under Section 138 of the NI Act should be dealt with by the Trial Court.

In the result, this criminal revision petition is dismissed as being devoid of merits. Connected miscellaneous petitions are closed. It is made clear that whatever has been observed above is only for the limited purpose of deciding this petition and the trial Court shall proceed with the main case uninfluenced by the observations made in this order.

Sd/-
Deputy Registrar(J)

//True Copy//

Sub Assistant Registrar

nsd

To

The Judicial Magistrate-II,
Fast Track Court at Magisterial Level,
Coimbatore.

+2 cc's to Mr.K.N.Nataraj, Advocate, Sr.No. 47304

Cr1.R.C.No.529 of 2019

VP(CO)
CSL/10.07.2019

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