IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.30054 of 2014 and
M.P.No. 1 of 2014 & M.P.No.1 of 2015

Vishnu Narain
Managing Director,
Ibex Gallaghar Private Limited,
No.175/54, Rathina Vilasa Road,
Basavangudi, Bangalore - 560 004. ... Petitioner / Accused - 2

Vs.

1. The Sub Inspector of Police,
   District Crime Branch,
   Coimbatore District.

2. Reshma George ...Respondents / Complainant / Defacto complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in FIR in Crime No.25 of 2014 on the file of the first respondent police, and quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.A.E.Ravi Chandran

For Respondents
For R1 : Mr.Mohammed Riyaz
Additional Public Prosecutor.
For R2 : Mr.R.Amizhdhu

O R D E R

This Petition is filed to quash the FIR in Crime No.25 of 2014 registered for the offences under Sections 120(b), 467, 461, 408 420 r/w Section 511 of IPC.

2. The learned counsel appearing for the petitioner would submit that the petitioner is the Managing Director of M/s. Ibex Gallagher Private Limited (herein after referred to as IGPL). Originally, the IGPL initiated proceedings under Section 138 of Negotiable Instruments Act in C.C.No.17519 of 2009, before the

learned XVI Additional Chief Metropolitan Magistrate, Bangalore as against the second respondent/defacto complainant. The second respondent is the distributor of IGPL and she failed to carry out installation of electric fencing equipment in several places including Hosur forest area. Therefore, there was an outstanding of Rs.36,98,811/- towards materials supplied to the second respondent. Towards the said liability i.e., payment for the supply of materials, the second respondent issued a cheque bearing No.039502 dated 27.05.2008 drawn on Federal Bank, Coimbatore. When the cheque was presented by the petitioner, it was returned as "Account closed". Therefore, the petitioner initiated proceedings under Section 138 of Negotiable Instruments Act in C.C.No17519 of 2009 on the file of the XVI Additional Chief Metropolitan Magistrate, Bangalore, as against the second respondent. The complaint of the petitioner had been proved and the learned Magistrate convicted the second respondent for the offence under Section 138 of NI Act and sentenced her to pay compensation of Rs.36,98,811/- and fine of Rs.2,000/- failing which, to undergo simple imprisonment for a period of six weeks, by an order dated 07.11.2019.

2.1. As against the said conviction, the second respondent preferred an appeal in Crl.A.No.914 of 2009 before the XIII Fast Track Court, Bangalore, and the said appeal was also dismissed by an order dated 27.05.2014. Only to escape from the clutches of law, the second respondent lodged the present complaint before the Superintendent of Police, Coimbatore, on 13.06.2014, allegation that the cheque bearing No.039502 dated 27.05.2008, was issued for the security purpose and it was misused by the petitioner and hence the defacto complainant got convicted. The said complaint was forwarded to the first respondent herein and a case has been registered in Crime No.25 of 2014. Further, he submitted that the entire compliant malted with false allegations and without considering the said fact, the first respondent registered the case, mechanically. Therefore, he prayed to quash the FIR.

3. The learned counsel appearing for the second respondent submitted that the second respondent was appointed as the sole distributor for Tamilnadu for erecting solar electric fencing equipments manufactured by the petitioner herein. In respect of the above business, there was a due from the petitioner by way of commission to the second respondent. When the second respondent demanded the money, the petitioner misused the cheque bearing No.039502 dated 27.05.2008, which was issued by the second respondent for security purpose, during the year 2003. The petitioner also initiated proceedings under Section 138 of Negotiable Instruments Act, in which the second respondent got conviction. However the District Court also dismissed the appeal

filed by the second respondent, she approached the Bangalore High Court and obtained stay of conviction. He further submitted that the cheque bounce case cannot be a ground to quash the criminal complaint given by the second respondent. Therefore he vehemently opposed to quash the FIR.

4. The learned Additional Public Prosecutor would submit that the petitioner misused the cheque issued by the second respondent and also initiated proceedings under Section 138 of Negotiable Instruments Act as against her. It is only in the FIR stage and it has to be investigated further. Therefore, he prayed for dismissal of this petition.

5. Heard Mr.A.E.Ravi Chandran, learned counsel appearing for the petitioner, Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the first respondent and Mr.R.Amizhdhu, learned counsel appearing for the second respondent.

6. It is seen that the complaint lodged by the second respondent on 30.06.2014 before the Superintendent of Police, Coimbatore and the same was forwarded to the first respondent and registered a case in Crime No.25 of 2014 for the offence under Sections 120(b), 467, 461, 408 420 r/w Section 511 of IPC, in which the petitioner is arraigned as A2, who is the Managing Director of IGPL.

7. Admittedly, the petitioner initiated proceedings for the offences punishable under Section 138 of Negotiable Instruments Act, as against the second respondent, in which, she was convicted in C.C.No.17519 of 2009 by the learned XVI Additional Chief Metropolitan Magistrate, Bangalore on 07.11.2009. Appeal was also confirmed in Crl.A.No.914 of 2009 on the file of the XIII Fast Track Court, Bangalore by an order dated 27.05.2014. It is very curious to note that the alleged cheque mentioned in the present complaint is the instrument in the above said proceedings, which was issued by the second respondent for a sum of Rs.36,98,811/- and it is also confirmed by the two Courts in the State of Karnataka and the second respondent was convicted. Only to escape from the clutches of law and not to execute the said order, the present complaint has been foisted as against the petitioner. It is nothing but clear abuse of process of law.

8. It is also seen that after the lapse of six years from the knowledge of the occurrence, the second respondent lodged this complaint suppressing the entire above facts and the first respondent also without even conducting any enquiry mechanically registered the FIR. Hence, this Court feels that the FIR is liable to be quashed.

9. Accordingly, the Criminal Original Petition is allowed and FIR in Crime No.25 of 2014 on the file of the first respondent police is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

rts

To

1. The Sub Inspector of Police,
   District Crime Branch,
   Coimbatore District.

2. The Public Prosecutor,
   High Court of Madras,
   Chennai.

+1 cc to Mr.A.E.Ravichandran, Advocate, S.R.No.13889

CRL.O.P.No.30054 of 2014 and
M.P.No. 1 of 2014 & M.P.No.1 of 2015

NMI(CO)
SSM(18/03/2019).