

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 20.02.2019

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.1372 of 2014
and M.P.No.1 of 2014

T.Arulmozhi

... Petitioner

Vs.

N.Arumugam

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for records in S.T.C.No.1814 of 2013 pending on the file of the Judicial Magistrate No.I, Pollachi, Coimbatore District and to quash the same.

For Petitioner : Mr.N.Sudharsan

For Respondent : No appearance

O R D E R

This Criminal Original petition has been filed to quash the proceedings in ST.C.No.1814 of 2013 pending on the file of the learned Judicial Magistrate-I, Pollachi, Coimbatore District.

2.The respondent filed a complaint against the petitioner before the learned Judicial Magistrate No.I, Pollachi, Coimbatore District for an offence under Section 138 of the Negotiable Instruments Act and the same was taken cognizance by the learned Magistrate in S.T.C.No.1814 of 2013. The averments made in the complaint is that the petitioner had issued a cheque of City Union Bank for an amount of Rs.30,00,000/- towards repayment of hand loan from the respondent. When the respondent presented the cheque, it was returned for the reason "insufficient of funds". Hence, the aforesaid complaint was made by the respondent.

3.The learned counsel for the petitioner would submit that the petitioner is no way connected with the respondent/complainant and he is a stranger to the petitioner. He had already lodged a complaint with regard to theft of his valuables and the signed cheque. The disputed cheque in the impugned complaint is also one of the cheque, which was stolen

by the accused person. In this regard, the petitioner has lodged a complaint and the same was registered in Crime No.649 of 2010 and a charge sheet was also laid in C.C.No.26 of 2011 on the file of the learned Judicial Magistrate-I, Pollachi and the trial is pending. He further submitted that there is no legally enforceable liability and the disputed cheque is also one of the cheques, which was theft from the petitioner's premises. Therefore, there is no legally enforceable debt by the petitioner to the respondent.

4. Heard Mr.N.Sudharsan, learned counsel for the petitioner. None appeared on behalf of the respondent.

5. It is seen from the complaint, that the petitioner is due to the respondent for a sum of Rs.30 Lakhs, for which he issued a cheque dated 09.01.2013 addressed to City Union Bank. When the same was presented for collection, it was returned for the reason "insufficient fund". Hence, the respondent lodged a complaint for the offences under Section 138 of N.I. Act. It is also seen that the petitioner has also lodged a complaint regarding theft of cheques and valuables from his premises and the same was registered in Crime No.649 of 2010 for the offences under Sections 147, 448, 294(b), 506(ii) and 395 IPC r/w 4 of Tamil Nadu charging of Exorbitant Interest Ordinance Act 2003 in which the Inspector of Police, Town East Circle, Pollachi, filed a final report and the same has been taken cognizance by the learned Judicial Magistrate-I, Pollachi, Coimbatore, in C.C.No.26 of 2011 and the same is pending for trial.

6. On perusal of the complaint, the respondent/defacto complainant did not even mention the alleged cheque number. It is also seen that the amount was borrowed by the petitioner for his family expenditures. It is also seen from the averments in the complaint that on the statutory notice issued by the respondent, the petitioner has properly replied by calling upon the respondent to return the cheque. It is also seen from the charge sheet, that the alleged cheque number is mentioned in list of stolen materials viz., the cheque bearing 647802 drawn on City Union Centurian Bank, Coimbatore. Therefore, there is no legally enforceable debt to the respondent by the petitioner. That apart, the respondent is no way connected to the petitioner and he is a stranger to the petitioner.

7. In this regard, the learned counsel for the petitioner relied upon a judgment in 2006(I) ISJ(Banking) 298 in the case of Abdul Raheem Vs.U.P.K.Mohammed Haneefa. The relevant portion of the order is extracted hereunder:

"17. Conduct of P.W.1/Complainant during the cross-examination is also to be pointed out. The Complainant being rk;ge;jp(brother?) of Umar Kathaf must be in the know of things. But during cross-

examination, when P.W.1/complainant was questioned about the disputes and the civil case, he feigned ignorance which is suggestive that he is not a truthful witness. Taking note of the conduct of P.W.1, the learned Magistrate was right in raising doubts on the credentials of P.W.1, the learned Magistrate was right in raising doubts on the credentials of P.W.1 and his claim of advancing hand loan in Feb.1996.

18. On the facts and circumstances of the case, the trial Court is justified in raising the doubt on the advancement of the hand loan and whether there is any "legally enforceable debt". It is to be borne in mind that in an appeal against the acquittal, the High Court would be slow to interfere with the order of acquittal. Unless the High Court is satisfied that the reasonings for acquittal are palpably wrong and unsustainable, the High Court would not interfere with the order of acquittal. The reasoning of the trial Court for acquitting the accused is well in conformity with the evidence and materials on record. This Court finds no reason to reverse the order of acquittal. This appeal has no merits and is bound to fail."

Though it is arising out of Criminal Appeal as against acquittal, the dictum laid down is that there is a doubt on the advancement of the hand loan and whether there is any "legally enforceable debt".

8. In the case on hand, there is no legally enforceable debt and also the alleged cheque was stolen and for which the petitioner lodged a complaint and it is pending for trial in C.C.No.26 of 2011, on the file of the learned Judicial Magistrate-I, Pollachi, Coimbatore.

9. In view of the above, this Criminal Original Petition is allowed and the proceedings in S.T.C.No.1814 of 2013 is hereby quashed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rm

To

1. The learned Judicial Magistrate I,
Pollachi,
Coimbatore District.

2. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.N.Sudharsan, Advocate, S.R.No.15953

CRL.O.P.No.1372 of 2014

rrs 11/03/2019



WEB COPY