

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2019

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.No.26204 of 2014

and

M.P.No.1 of 2014

1. Antoinette

2. D.Simon

...Petitioners

Vs.

1. State rep. By
Sub-Inspector of Police,
Town Police Station,
Karaikal, Puducherry
Cr.No.304 of 2008.

2. Suguna

...Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records relating to the C.C.No.302 of 2011 on the file of the learned Judicial Magistrate No.II, Karaikal, Puducherry and quash the same.

For Petitioners : Mr. K.Sasindaran

For 1st Respondent : Mr. Barathachakaravarthy
Public Prosecutor, Puducherry

For 2nd Respondent : M/s.Sai Bharath

ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.302 of 2011 on the file of the Judicial Magistrate No.II, Karaikal, Puducherry.

2. The petitioners have been shown as A1 and A2 in the final report.

3. The 2nd respondent had given a complaint before the respondent police on the ground that the petitioners had opened a savings bank account for the 2nd respondent in Indian Bank and had obtained savings bank passbook and cheque book in the name

of the 2nd respondent. Thereafter, the petitioners have forged the signature of the 2nd respondent in a cheque and have presented the same before the bank and the cheque got dishonoured resulting in the initiation of the proceedings under Section 138 of the Negotiable Instruments Act. The 2nd respondent has therefore alleged that the petitioners have committed the offence of cheating and forgery.

4. Based on the complaint given by the 2nd respondent, an FIR came to be registered by the respondent police in Crime No.304 of 2008. On completion of investigation, a final report was also filed before the Judicial Magistrate No.II, Karaikal and the same was taken on file in C.C.No.302 of 2011.

5. The learned counsel for the petitioner submitted that the entire complaint of the 2nd respondent is false since the complaint was given only as a counter-blast to the proceedings initiated by the petitioners under Section 138 of the Negotiable Instruments Act. The complaint itself came to be lodged only after the 2nd respondent received the statutory notice under Section 138 of the Negotiable Instruments Act. The learned counsel further submitted that the 2nd respondent challenged the 138 proceedings in Crl.O.P.No.15456 of 2009 and the same was dismissed by an order dated 17.12.2014. The learned counsel further submitted that an issue which the 2nd respondent could have taken as a defence in the 138 complaint, has now become a subject matter of a final report and therefore, the entire proceedings is an abuse of process of Court.

6. The learned Public Prosecutor, Puducherry appearing on behalf of the 1st respondent submitted that the statements recorded from the witnesses clearly establishes the fact that it was the petitioners who had signed and taken away the passbook and the cheque book belonging to the 2nd respondent from the bank and thereafter, they have misused the cheque leaves by forging the signature of the 2nd respondent. The learned counsel further submitted that there are sufficient materials to frame a charge against the petitioners and the petitioners have not made any ground before this Court to interfere with the proceedings.

7. The learned counsel appearing on behalf of the 2nd respondent submitted that they have given change of vakalat to the client long back. Till date, the 2nd respondent has not engaged any other advocate.

8. This Court has carefully considered the submissions made on either side and also the materials placed on record.

9. The specific case of the 2nd respondent is that a cheque leaf has been forged and thereby he has been cheated by the petitioners. The minimum that is expected from the 1st respondent during the course of investigation is to get an expert opinion with regard to the signature found in the cheque. Without doing that, the 1st respondent has merely taken a statement from various persons and have laid a final report for an offence of cheating and forgery. Even while taking a statement from the Bank Manager, the said Manager has not stated anything regarding the discrepancy in signature or forgery on the part of the petitioners.

10. It is seen from the records that the complaint itself came to be given only after the 2nd respondent received the statutory notice under Section 138 of Negotiable Instruments Act. The proceedings initiated under Section 138 of the Negotiable Instruments Act was challenged before this Court by the 2nd respondent and the same was also dismissed. An issue which the 2nd respondent should have taken as a defence, is now attempted to be prosecuted independently before the Court below. Literally, two Courts are trying the same issue and therefore, there will be multiplicity of the proceedings.

11. The Hon'ble Supreme Court in Central Bank of India and another v. M/s.Saxona Farms and others reported in 1999 (III) CTC 611 and this Court in V.Kannan and others v. State by District Crime Branch, Namakkal reported in 2007 (4) CTC page 520 have categorically held that separate proceedings for cheating can be initiated and the same will not amount to double jeopardy.

12. It will be relevant to extract the portions of the judgement referred herein above.

1. 1999 (III) CTC 611 (Central Bank of India and another v. M/s.Saxona Farms and others

"13. Under Section 142 of the Act, court can take cognizance of an offence punishable under Section 138 only on a complaint in writing made by the payee. Therefore, the police could not have started investigation under Section 138 of the Act. But if a cheque is dishonoured drawer may expose himself to prosecution under various Sections of the Indian Penal Code which are cognizable and police could take up investigation. What was indicated in the notice was

that in addition to the legal action by the appellant-bank under the Act, option was kept open for taking action against the respondents under the provisions of Indian Penal Code by informing the police. Therefore, the contention of learned Counsel for the respondents has no force".

2. 2007 (4) CTC 520 (V.Kannan and others v. State by District Crime Branch, Namakkal, Namakkal District.

"8. The only contention raised in this matter is that already the informant has initiated proceedings under Section 138, N.I Act and as such, he is not entitled to initiate further proceedings for the offence of cheating, as the same would amount to double jeopardy.

9. At the outset I am unable to accept the contention of the learned counsel for the petitioners that the affected and aggrieved person, namely, the informant, can initiate both the proceedings, namely, under Sections 138 of the Negotiable Instruments Act as well as for the offence of cheating under Section 420, IPC.

10. The Hon'ble Supreme Court of India has held in Central Bank of India v. M/s.Saxons Farms, 1999 (3) CTC 611 : 1999 CrI.L.J.4571 that,

"13. Under Section 112 of the Act, Court can take cognizance of an offence punishable under Section 138 only on a Complaint in writing made by the payee. Therefore, the police could not have started investigation under Section 138 of the Act. But if a cheque is dishonoured drawer may expose himself to prosecution under various Sections of the Indian Penal Code which are cognizable and police could take up investigation. What was indicated in the notice was that in addition to the legal action by the appellant-bank under the Act, option was kept open for taking action against the respondents under the provisions of Indian Penal Code by informing the police. Therefore, the contention of learned counsel for the respondents has no force".

A perusal of the Complaint shows that there is an allegation to the effect that the accused had issued a post-dated cheque without making proper arrangements of funds into the credit of his account and as such it is clear that the accused had dishonest intention not to honour the amount even at the time of issuance of the

cheque and the act of issuing the cheque which was dishonoured amounts to an offence of cheating. In this case, in the charge-sheet also it is specifically mentioned that A-1 to A-5 in pursuance of common intention to cheat witnesses 1 to 6. A-3 issued a post-dated cheque dated 03.04.2002 in favour of them for various amounts to the extent of Rs.3,88,500/- to be drawn in the ICICI Bank, Namakkal, without sufficient fund. Therefore, there are enough materials available on record to implicate the petitioners, who have been arrayed as A-3 to A-5 for the alleged offence of cheating.

11. The Andhra Pradesh High Court in a Full Bench decision in a case Opts Marketing Pvt. Ltd., v. State of A.P., 2001 CrLJ 1489, has held as follows:

Even after introduction of Section 138 of the Negotiable Instruments Act, prosecution under Section 420, IPC, is maintainable in case of dishonour of cheques or post-dated cheques issued towards payment of price of the goods purchased or hand loan taken, or in discharge of an antecedent debt or towards payment of goods supplier earlier, if the charge-sheet contains an allegation that the accused had dishonest intention not to pay even at the time of issuance of the cheque, and the act of issuing the cheque, which was dishonoured, caused damage to his mind, body or reputation".

12. In view of the settled principle of law laid down by the Apex Court and the decision of the Full Bench of Andhra Pradesh High Court as cited supra and in view of the materials available on record, this Court is of the considered view that initiation of proceedings for the offence under Section 420 I.P.C., against the petitioner in spite of the proceedings pending against the petitioner for the offence under Section 138 of the Negotiable Instruments Act would not amount to double jeopardy.

13. If this Court is to interfere with the proceedings at this stage, the 2nd respondent will be virtually, losing his defence in the 138 proceedings. In the fitness of things it would be better if both the proceedings are tried by the same Court since the issue involved is the same and by doing so, the multiplicity of proceedings can be avoided.

14. In view of the above, this Court is not inclined to interfere with the proceedings pending in C.C.No.302 of 2011 on

the file of the Judicial Magistrate No.II, Karaikal and the said Court is directed to conduct a joint trial in S.T.C.No.657 of 2009 and C.C.No.302 of 2011 and proceed further in accordance with law and dispose of both the cases within a period of three months from the date of receipt of copy of this order. This Criminal Original Petition is disposed of with the above direction. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.II,
Karaikal,
Puducherry.
2. do Thro chief Judicial Magistrate,
Puducherry.
3. The Sub-Inspector of Police,
Town Police Station,
Karaikal, Puducherry
Cr.No.304 of 2008.

+1cc to M/s.K.Sasindran, Advocate sr.48967
+1cc to M/s.Sai & Bharath, Advocate sr.49284
+1cc to The Public Prosecutor, Puducherry sr.49169

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nr 11/07/2019

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