

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.17491 of

2014

and Crl.M.P.No.1 of 2014

K.Selvam

...Petitioner

-Vs-

M.R.Hariram

...Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records in C.C.No.809 of 2009 on the file of the Learned Fast Track Court -II, Egmore and quash the same.

For Petitioner : Mr.M.K.Parandhaman

For Respondent : Mr.S.Asirmathuram

O R D E R

This Criminal Original Petition has been filed seeking to quash the proceedings initiated by the respondent against the petitioner for an offence under Section 138 of the Negotiable Instruments Act.

2. A reading of the complaint reveals the fact that the petitioner had stood as a guarantor on behalf of one Selvaraj and Saraswathy and he had issued a cheque as a security for the discharge of balance sale consideration by the above said two persons, in favour of the complainant. This cheque has been deposited and it was dishonoured on the ground of 'in sufficient funds', therefore, the respondent has proceeded to file a complaint against the petitioner.

3. The learned counsel for the petitioner submitted that the entire complaint is an abuse of process of Court. The learned counsel for the petitioner submitted that there is pending Civil proceeding between the parties in second appeal No.472 of 2003. The parties had entered into an agreement and reduced it in the form of affidavit on 15.11.2006. The relevant portions of the affidavit is extracted hereunder:-

''1. We submit that we have disposed the property all that piece and parcel of land situated in Katupakkam Village, Poonamallee Taluk, Thiruvallur District, comprised in Survey Nos.210/1 and 210/2 an total extent of acre 0.33 ½ cents to and in favour of the Purchaser, Mr.Selvaraj and another.

2. We submit that out of the extent Acre 0.33 cents, there is a small problem in the extent acre 0.33 cents and there is a suit pending in the High Court till the disposal of the suit vide S.A.No.472 of 2003, we have agreed to withhold to a sum of Rs.6 Lakhs to the custody of the Purchaser and we hereby assure and indemnify the Purchaser against the said suit and we sure that we will be winning the said case.

3. We submit that after the disposal of the said case in our favour on 08.011.2006, we have received the said amount of Rs.6 Lakhs by cash from the Purchaser on 15.11.2006. For the sake of Guarantee Mr.Selvam had given an undated cheque drawn on Indian Bank, Chennai bearing No.455544 for the said amount. Since the said cheque was lost and misplaced, we could not returned the said cheque to the guarantor Mr.Selvan and further state that as and when we found the said cheque we will return the same. As such, neither the purchaser nor the guarantor has any liability to us and we assure that there is no further claim of whatsoever nature.''

4. The learned counsel for the petitioner by pointing out to the averments made in the affidavit, submitted that entire amount of Rs.6 Lakhs has been received by the defacto complainant and after two years, the respondent has proceeded to file a criminal complaint against the petitioner based on the very same cheque, which was claimed to be lost in the affidavit.

5. The respondent has been served and there is no representation for the respondent. Therefore, this Court proceeds to deal with this case on merits.

6. While, exercising its jurisdiction under Section 482 of Cr.P.C, this Court should not look into the defence documents unless it is of sterling quality. In the present case, there is pending dispute between the parties before the Civil Court and this petitioner has stood as a guarantor and given his cheque as a security. The concerned parties have arrived at a settlement and Rs.6 Lakhs was also received by the respondent by way of

cash. However, the cheque given as a security by the petitioner was not returned back on the ground that it is missing. Nearly, after two years , the present complaint came to be filed before the Court below.

7. The documents produced before this Court has not been refuted by the respondent. This Court is also satisfied with the documents produced before this Court and this Court does not doubt the veracity of the above said affidavit.

8. In view of the above, the continuation of the proceedings against the petitioner is an abuse of process of Court. The case has been pending from the year 2009, without any progress and no useful purpose will be served by keeping it pending.

9. In the result, the proceeding in C.C.No.809 of 2009, on the file of the Learned Fast Track Court -II, Egmore, is hereby quashed and accordingly this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

msrm/ub
To

The learned Judicial Magistrate,
Fast Track Court -II, Egmore, Chennai.

+1 CC to Mr.M.K.Parandhaman, Advocate sr 65270.

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BS (CO)
SP(29/08/2019)

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