BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.(MD) No.6449 of 2014
and
M.P.(MD) Nos.1 & 2 of 2014

M.Gomathi Sankar ... Petitioner / Accused

vs.

Utchimahali Chettiar ... Respondent / Complainant

PRAYER: Petition is filed under Section 482 Cr.P.C., to call for the records relating to the impugned proceedings in S.T.C.No.169 of 2014 pending on the file of Learned Judicial Magistrate, Thenkasi and quash the same.

For Petitioner : Mr.N.Dilip Kumar
For Respondent : No appearance

O R D E R

For the sake of convenience, the petitioner and the respondent will be referred to as the accused and the complainant respectively.

2. It is the case of the complainant that, on 27.10.2013, the accused borrowed a sum of Rs.10,00,000/- promising to return the same within three weeks. This amount was disbursed to the accused by the complainant in the presence of one Murugan, son of Subbiah. Towards this liability, the accused gave a postdated cheque, bearing the date 18.11.2013 and No.070255, drawn on Canara Bank, Tirunelveli Junction Branch, to the complainant. On 18.11.2013, the complainant presented the cheque in his Bank, namely, Central Bank of India, Keelapavoor Branch, for clearance. On 25.11.2013, the impugned cheque was returned with an endorsement "signature differs". The complainant issued a statutory notice dated 16.12.2013 through his Advocate, which was received by the accused on 17.12.2013. Since the accused did not comply with the demand, the complainant initiated a prosecution in S.T.C.No.169 of 2014, before the learned Judicial Magistrate, Tenkasi, under Section 138 of the Negotiable Instruments Act (hereinafter, referred to as "the N.I.Act"), against the accused, for quashing which, the accused is before this Court.

3. Heard the learned counsel appearing for the accused, who submitted that the complainant is a professional moneylender and there were disputes between the complainant and the accused earlier, in which, a notice dated 18.11.2013 was issued to the complainant by the accused. He also contended that, the accused does not have any bank account with Canara Bank, Tirunelveli Junction Branch and the impugned cheque is that of one Pushparaj, a friend of the accused. Therefore, he submitted that when the bank account itself is not in the name of the accused, he cannot be prosecuted under Section 138 of the N.I.Act.

4. This Court gave its anxious consideration to the aforesaid submissions.

5. It is the specific case of the complainant that the accused borrowed a sum of Rs.10,00,000/- on 27.10.2013, in the presence of one Murugan, son of Subbiah, for his urgent needs and issued the impugned cheque bearing the date 18.11.2013 in the name of the complainant. As stated above, the impugned cheque was returned with the endorsement “signature differs”. The complainant has issued the statutory notice dated 16.12.2013, through his Advocate, which has been received by the accused on 17.12.2013. The accused did not choose to give any reply to the statutory demand notice within fifteen days. However, in the typed set of papers, the accused has annexed a reply notice dated 30.01.2014 addressed to the complainant and not to the counsel for the complainant, who had issued the statutory notice.

6. Normally, when an Advocate notice is issued to a party, the reply notice will be addressed to the Advocate, who had issued the notice. Strangely, in this case, the reply notice dated 30.01.2014 is addressed to the complainant and not to the Advocate, who had issued the statutory notice dated 16.12.2013. In the reply notice dated 30.01.2014, the accused has taken a stand that he does not have any bank account with Canara Bank, Tirunelveli Junction Branch. He has further stated that the impugned cheque belongs to his friend Pushparaj. Had Pushparaj signed the impugned cheque, then the same would have got honoured, had there been sufficient funds in the account. Had there been no sufficient funds, the cheque would have been returned with an endorsement “insufficient funds”. In this case, the impugned cheque has been returned with the endorsement “signature differs”. Now, if we examine the stand taken by the accused that, he has no bank account in Canara Bank, Tirunelveli Junction Branch, it *prima facie* appears that the accused has given a cheque belonging to his friend Pushparaj and put a vague signature in the cheque in order to cheat the complainant. It is true that a prosecution under Section 138 of the N.I. Act can be maintained only against an accused, who has a bank account and who gives the cheque from such account and the cheque is returned as unpaid. In other words, if the bank account itself is not in the name of the accused, the accused cannot be prosecuted under Section 138 of the N.I.Act for dishonour of the said cheque. Nevertheless, the accused can be prosecuted under Section 420 I.P.C. for cheating. Therefore, when there are so many disputed questions of fact in this case, the prosecution cannot be quashed at the threshold.

7. In the result, this Criminal Original Petition is dismissed.

8. The accused is directed to surrender before the Trial Court, within a period of four weeks from the date of receipt of a copy of this order and on such surrender, he shall be released on bail under Section 436 Cr.P.C., on he executing a bond for Rs.10,000/- (Rupees ten thousand only) with two sureties. If the accused absconds, a fresh F.I.R. can be registered against him under Section 229-A I.P.C. If during trial, it comes to light that the accused had signed in the impugned cheque and that the impugned cheque relates to the account of another person, the Trial Court may return the impugned cheque to the complainant and liberty is given to the complainant to approach the Police to prosecute the accused for cheating.

9. The Trial Court is directed to complete the trial, within a period of three months from the date of receipt of a copy of this order, provided the petitioner cooperates by cross-examining the witnesses on the day they are examined in chief. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

Sub Assistant Registrar(CS)

krk

To:
The Judicial Magistrate,
Thenkasi.

+1 CC to M/s.N.DILIP KUMAR, Advocate (SR-56720[F] dated 26/03/2019)

<u>Crl.O.P.(MD) No.6449 of 2014</u>
<u>and</u>
<u>M.P.(MD) Nos.1 & 2 of 2014</u>

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