



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
15.04.2019	22.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE **P.N.PRAKASH**

CRL.OP[MD].No.6889 of 2014

and

CrI.MP(MD).No.2 of 2014

Victoria Rani : Petitioner/Accused

Vs.

A.Tamilselvan : Respondent/Complainant

PRAYER: Petition is filed under Section 482 of the Code of Criminal Procedure to call for the records in connection with S.T.C.No.6 of 2014, on the file of the Judicial Magistrate No.1, Tirunelveli, Tirunelveli District and quash the same as well as the consequent summons as against the petitioner as accused.

For Petitioner : Mr.S.Xavier Rajini

For Respondent : Mr.S.Ramasamy

O R D E R

For the sake of convenience, the parties will be referred to as the complainant and the accused.

2. It is the case of the complainant that the accused borrowed a sum of Rs.2,70,000/- on 07.10.2013, promising to repay the amount within one month. When the complainant demanded the return of the amount, on 07.11.2013, the accused gave a post-dated cheque, bearing No.944645, dated 11.11.2013, drawn on Post Office Savings Bank Account, Tirunelveli, in favour of the complainant. The complainant presented the cheque on 11.11.2013 and it was dishonoured on the ground of "insufficiency of funds". Thereafter, on 18.11.2013, the complainant issued the statutory notice dated 23.11.2013, which was received by the accused on 25.11.2013. The accused sent a reply notice dated 05.12.2013, repudiating the debt. Hence, the complainant has initiated prosecution in S.T.C.No.6 of 2014, before the learned Judicial Magistrate No.1, Tirunelveli, under Section 138 of the Negotiable Instruments Act, 1881, for quashing which, the accused is before this Court.



3. Heard the learned counsel for the accused and the learned counsel appearing for the complainant.

4. The learned counsel for the accused submitted that the complainant is a money lender and that the accused has not had any monetary transaction with the complainant. He further contended that the accused had given the impugned cheque to one Sankar for a loan of Rs.20,000/- and that the said Sankar has handed over the cheque to the complainant, based on which the present prosecution has been launched. That apart, the learned counsel for the accused brought to the notice of this Court two SMSs alleged to have been sent by the complainant to the accused, which read as under:-

"Madam Domorrow morning ur cash filing am very sorry. Thank u. Sender Tamil +91 94434 51545 Centre +9194424 99997, Sent: 28-Apr-2013 13:49:05
Madam ur cas no.Stc.36/2013. Sender: +91 94434 51545 Centre +91 94424 99997, Sent: 30-Apr-2013 10:02:58"

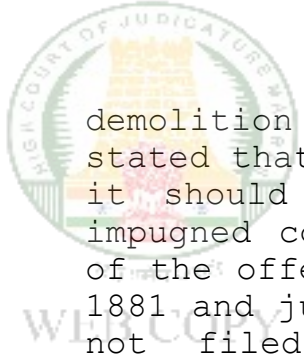
5. Based on these two SMS, the learned counsel for the accused contended that the complainant has sent the two SMSs as early as 28.04.2013 and 30.04.2013, but, in the complaint, he has alleged that the loan was obtained on 07.10.2013 and hence, the learned counsel contended that the prosecution deserves to be quashed.

6. When this Court explained to the learned counsel for the accused that disputed questions of fact cannot be gone into in a quash application, the learned counsel, in support of his contentions, relied upon the following Judgments:-

- **Express Newspapers Pvt., Ltd., Vs. Union of India, [AIR 1986 SC 872];**
- **Samiyappan Vs. S.Sarmila Banu [2016 (3) MWN (Cr) DCC 102 Mad];** and
- **Basalingappa Vs. Mudibasappa [Criminal Appeal No.636 of 2019, decided on 09.04.2019].**

7. He drew the attention of this Court to Paragraph No.15 of **Express Newspapers Pvt., Ltd, supra**, wherein the Supreme Court has held that if an allegation is not denied in the counter affidavit, it should be construed as accepted. Based on this observation of Supreme Court, the learned counsel contended that since the complainant has not denied the allegations made by the accused that two SMSs were sent on 29.04.2013 and 30.04.2013, this Court should accept it as proved and quash the prosecution.

8. **Express Newspapers Pvt., Ltd [supra]** arose in a matter, in which the Central Government had issued demolition notice to demolish the Indian Express Building. In order to protect the cherished freedom of speech guaranteed by Article 19(1)(a) of the Constitution of India, the Supreme Court intervened and quashed the



demolition notices. Only in that context, the Supreme Court has stated that if an allegation is not denied in the counter affidavit, it should be deemed to have been accepted. In this case, the impugned complaint in S.T.C.No.6 of 2014 discloses the ingredients of the offence under Section 138 of the Negotiable Instruments Act, 1881 and just because in the quash application, the complainant has not filed any counter affidavit, [which is, actually, not necessary], the prosecution cannot be quashed. In fact, even in the complaint in S.T.C.No.6 of 2014, the complainant has referred to the reply notice dated 05.12.2013, that was sent by the accused and has stated that the allegation contained therein are false and frivolous.

9. As regards the other two Judgments, they arose in appeals after full-fledged trials and not in quash application. Therefore, this Court cannot rely upon those two SMSs to quash the prosecution at the threshold.

10. The learned counsel for the accused took this Court through seven earlier orders passed by various Magistrates in Section 138 NI Act prosecution launched by the same complainant against different persons in order to show that the complainant is a Court bird. This also cannot be looked into by this Court in this quash application and no finding can be given about the character of the complainant.

11. In the result, this Criminal Original Petition is devoid of merits and it is dismissed accordingly, giving liberty to the accused to raise all the points before the Trial Court. The learned counsel for the accused submitted that the accused is a School Teacher. Therefore, this Court directs the accused to appear before the Trial Court within four weeks from the date of receipt of a copy of this order and execute a bond for a sum of Rs.5,000/- without sureties under Section 88 Cr.PC. She should appear before the Trial Court for questioning under Section 251 Cr.PC, 313 Cr.PC., and on the date of Judgment. If she gives an undertaking that she will not dispute her identity and that the counsel engaged by her will cross-examine the witnesses, on the day they are examined-in-chief, without adopting any dilatory tactics, then, the Trial Court may entertain her petition under Section 317 Cr.PC., liberally. If the accused adopts any dilatory tactics, it is open to the Trial Court to insist upon her presence. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Crl.Side)

// True Copy //

Sub Assistant Registrar(CS)



To

The Judicial Magistrate No.1,
Tirunelveli, Tirunelveli District.

+1 CC to M/s.S.XAVIER RAJINI, Advocate in SR-61920

CRL.OP[MD].No.6889 of 2014
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