BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.10.2019

CORAM:

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

Crl.O.P.(MD)No.3156 of 2019

and

Crl.M.P(MD) Nos.1756 and 1757 of 2019

1. M/s.Srushti Incorporate
 Partnership Firm
 46 A, Velayuthan Road
 Sivakasi
 Rep. through its partner
 V.Sathishkumar

2. V.Sathishkumar

3.S.Gowri ... Petitioners/Accused

Vs.

M/s. Jana Papers(P) Ltd.,
Rep. through its Director
S.Janakharaj ...Respondents/Complainant

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records from the trial court in STC No.188 of 2019 on the file of the Judicial Magistrate No.I, Sivakasi and quash the same.

For Petitioners : Mr.J.Jeyakumaran

For Respondent : Mr.A.Sivaji

ORDER

This Criminal Original Petition has been to quash the proceedings in STC No.188 of 2019 on the file of the learned Judicial Magistrate No.I, Sivakasi initiated by the respondent under Section 138 of the Negotiable Instrument Act.

2. The learned counsel for the petitioner would submit that the complainant is carrying on business as a dealer in paper and boards in the name and style of M/s. Jana Papers(P) Ltd at Sivakasi. The petitioner is also doing business in printing and book manufacturing in the name and style of M/s.Srushthi Incorporate, Sivakasi . They are doing business on credit basis. According to the complainant the petitioner is liable to pay a sum of Rs. 14,62,295/-as on 31.03.2018, Due to said outstanding the petitioner issued cheque for a sum of Rs. 2,25,000/- and the said cheque was presented for collection on 02.11.2018 and the same was dishonored with an endorsement 'exceeds arrangement' dated 05.11.2018 and immediately it was known to the petitioner and on 12.11.2018 the petitioner transferred the said cheque amount through

RTGS through his bank to the respondent/ complainant. Even then the cheque was represented for collection on 19.11.2018 and it was dishonored for the reason 'exceeds arrangement'. He further submitted that the alleged cheque amount even according to the respondent/defacto complainant was paid to the respondent through RTGS and as such the present complaint is nothing but clear abuse of process of law. Hence he prayed for quashing the same.

3. The learned counsel for the respondent would submit that on business transaction the petitioner owes a sum of Rs.14,62,295/-as on 31.03.2018 towards purchase of paper and boards and doing business on credit basis. Towards repayment of part amount the petitioner issued cheque dated 20.08.2018 and it was represented for collection on 02.11.2018 and the same was returned for the reason ' exceed arrangement ' on 05.11.2018. Immediately it was informed to the petitioner and thereafter he agreed to pay a sum of Rs.2,25,000/- and accordingly he also transferred the said sum of 12.11.2018 to his sister concern namely M/s.Laxmi Associates. He further submitted that in respect of remaining balance amount the petitioner instructed the respondent to represent the cheque for the same and on instructions it was represented on 19.11.2018 for collection and that cheque was also returned for the reason 'exceed arrangements' on 20.11.2018. Immediately he caused legal notice on 19.12.2018 stating all the above transactions. Even after duly serving notice to the petitioner, the petitioner did not chose to send any reply nor paid the cheque amount nor write any reply to the legal notice sent by the petitioner. Therefore he initiated proceedings under Section 138 of the Negotiable Instrument Act. Hence he sought for dismissal of the quash petition.

4. Heard Mr.J.Jeyakumaran learned counsel for the petitioners and Mr. A.Sivaji learned counsel for the respondent.

5. The respondent initiated proceedings under Section 138 of the Negotiable Instrument Act for dishonor of cheque issued by the petitioner towards part liability for a sum of Rs.2,25,000/- during their business transaction. It is seen from the legal notice dated 19.12.2018, wherein the respondent has categorically stated as follows:

> " *My client stated that they had presented the above said cheques through Tamil Nadu Mercantile Bank Ltd, Sivaksasi for collection on 02.11.2018. The said Tamil Nadu Mercantile Bank Sivakasi Branch in its turn had sent the above said cheque to Bank of India, Sivakasi Branch under CTS clearing. But the said Bank of India, Sivakasi Branch return dishonored the said cheque to Tamil Nadu Mercantile Bank Ltd, Sivakasi. The said Tamil Nadu Mercantile Bank, Sivakasi in its turn returned dishonour the above said cheques by its memo on 05.11.2018 stating the reason for dishonour as 'Exceed arrangement" and the same was informed by my clients banker. Thereafter you have remitted a sum of*

Rs.2,25,000/-on 12.11.2018 from your sister concern namely M/s.Lakshmi associates to my client's account as part payment for the outstanding amount and the same was given credit in my clients books of accounts. After adjusting the said amount, when my client contacted you for payment of balance sum of Rs.12,37,295/- you have assured my client that you will honour the above said dishonored cheque if the same again presented for collection. Based on your assurance on 19.11.2018 when my client had again presented the above said cheques through Tamil Nad Mercantile Bank Ltd, Sivakasi ,for collection on 19.11.2018. The said Tamilnad Mercantile Bank, Sivakasi Branch in its turn had sent the above said cheques through Tamilnad Mercantile Bank Ltd, Sivakasi for collection on 19.11.2018. The said Tamilnad Mercantile Bank, Sivakasi Branch in its turn has sent the above said cheque to Bank of India, Sivakasi Branch under CTS clearing. But the said Bank of India, Sivakasi Branch return dishonored the said cheque to Tamilnad Mercantile Bank, Sivakasi Ltd, Sivakasi and its turn returned dishonour the above said cheque by its memo on 20.11.2018 stating the reason for dishonour as 'Exceeds Arrangement'. Thereafter, my client tried to contact you, but there was no response from your end".

6. The respondent/ complainant has categorically stated in his notice dated 19.12.2018 that the alleged cheque was presented for collection and the same was returned for the reason 'exceeds arrangement' on 05.11.2018. Immediately it was informed to the petitioner and therefore the petitioner made payment through RTGS on 12.11.2018. Therefore according to the respondent/defacto complainant the request of the petitioner for remaining balance amount, for which the petitioner again instructed the respondent to represent the same for part payment of Rs.2,25,000/-. On instructions the respondent again represented the cheque for collection on 19.11.2018 and again it was dishonored for the reason 'exceeds arrangement'. Therefore the respondent caused legal notice on 19.12.2018 to petitioner and it was duly acknowledged by the petitioner.. Thereafter the petitioner did not send any reply to the notice issued by the respondent herein. If at all the petitioner has no outstanding amount towards the purchase of paper and boards from the respondent, the petitioner would have issued reply to the legal notice issued by the respondent, but failed to issue any reply to the notice. Further the case of the petitioner is that the cheque amount has been already paid through RTGS and as such the present cheque may not be used for another time for the same amount. The petitioner never instructed the respondent to represent the cheque once again. This point cannot be considered by this Court under Section 482 of Cr.P.C, since it is a mixed question of acts. In this regard it is relevant to rely upon judgment of the Honourable Supreme Court of India in ***Crl.A.No.1572 of 2019 -***

Central Bureau of Invstigation Vs. Arvind Khanna, wherein, it has been held as follows:

> *"19.After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.*
>
> *20.In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."*

The above judgment is squarely applicable to this case and as such, the points raised by the petitioner cannot be considered by this Court under Section 482 Cr.P.C. All the points raised by the petitioner can be considered only before the trail court during trial.

7. In the result, the petition is devoid of merits and liable to be dismissed. Accordingly the Criminal Original Petition is dismissed. The trial court is directed to complete the trial within a period of six months from the date of receipt of a copy of this order. Further,it is made clear that any observation made by this Court would not influence the mind of the trial court.

8.Further, the personal appearance of the petitioners are dispensed with and they shall be represented by a counsel after filing appropriate application. The petitioners shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

aav

To:

The Judicial Magistrate No.I, Sivakasi .

+1 CC to Mr.J.JEYAKUMARAN, Advocate (SR-94553[F] dated 25/10/2019)

+1 CC to Mr.A.SIVAJI, Advocate (SR-94602[F] dated 25/10/2019)

Crl.O.P.(MD)No.3156 of 2019
24.10.2019

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