



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD)No. 8029 of 2019

and Crl.M.P. (MD) Nos. 4948 & 4949 of 2019

P.S. Hepshiba

... Petitioner/accused

Vs.

Ramasubramanian

... Respondent/Complainant

PRAYER:- Petition filed under 482 of Cr.P.C., to call for the records and quash the proceedings pending against the petitioner in S.T.C. No.509 of 2019 on the file of the learned Judicial Magistrate, Alangulam.

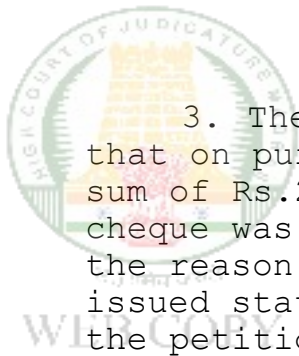
For Petitioner : Mr.A. Sivasubramanian

For Respondent : Mr.H. Arumugam

ORDER

This petition has been filed to quash the proceedings in S.T.C. No.509 of 2019 on the file of the learned Judicial Magistrate, Alangulam pending against the petitioner for the offence under Section 138 of Negotiable Instruments Act.

2. The learned Counsel appearing for the petitioner submitted that the second respondent and the petitioner was having business of selling and buying rice, as such as there are lot of transactions between them. The petitioner used to purchase rice on credit basis from the respondent. While, doing so, in the month of November 2018 the petitioner has approached the respondent for supply of rice in the usual manner and had given a cheque as security and whenever the sale proceeds the cheque will be returned to the petitioner. Even after payment of entire money the respondent without returning the said cheque presented the same for collection on the said transaction, it was dishonoured. As against which, the respondent has lodged the present complaint against the petitioner under Section 138 of Negotiable Instruments Act. He further submitted that there is absolutely illegal enforceable debt by the petitioner and the cheque was never issued for the legal enforceable debt. The cheque was issued only for the security purpose and after making entire payment, the respondent refused to return the cheque and presented for collection. Therefore, he sought for quashment of entire proceedings.



3. The learned counsel appearing for the respondent submitted that on purchase of rice a cheque was issued by the petitioner for a sum of Rs.21 lakhs and only on the instruction of the petitioner the cheque was presented for collection and the same was dishonoured for the reason that exists arrangement. Thereafter, the respondent has issued statutory notice and it was returned as refused to receive by the petitioner. Thereafter, the respondent has initiated proceedings under 138 of Negotiable Instruments Act. All the points raised by the petitioner have to be considered only during the trial before the trial Court. The cheque was not at all received for any security purpose and only on the transaction between the petitioner and the respondent in respect of rice business and the cheque was issued for the outstanding amount only. Therefore, he prayed for dismissal of the quash petition.

4. Heard Mr.A. Sivasubramanian, learned Counsel appearing for the petitioner and Mr.H. Arumugam, learned counsel appearing for the respondent.

5. The petitioner is a sole accused. The respondent has lodged a complaint for the offence punishable under section 138 of Negotiable Instruments Act, alleging that the petitioner and the respondent are rice merchants and during the business transaction, the petitioner was outstanding for which she has issued a cheque towards the discharge of her liability for a sum of Rs.21 lakhs and the same was presented for collection on her instruction. But, it was dishonoured for the reason that exists arrangement. Therefore, the respondent has issued statutory notice to the petitioner which was refused to receive the same was returned. Therefore, the respondent has lodged a complaint as against the petitioner.

6. The learned counsel appearing for the petitioner would submit that the cheque was dishonoured at the time of business transaction and the aforesaid cheque was issued as security purpose and it was never issued for any legal enforceable debt. It is seen from the complaint that during the business transactions between the petitioner and the respondent towards purchase of rice the petitioner has issued a cheque to the respondent the same was presented for collection. If at all it was issued for security purpose, the petitioner would have reply for the statutory notice issued by the respondent herein. The petitioner refused to receive the statutory notice issued by the respondent. Further, the petitioner never requested the respondent to return the cheque after making payments for the purchase of rice. As such, the petitioner has approached this Court only to quash the proceedings, without even reply to the statutory notice issued by the respondent. Further, the grounds raised by the petitioner is mixed question of fact and it cannot be considered under section 482 of Cr.P.C by this Court. All the transactions can be considered only during the trial Court before the trial Court and hence, the Criminal Original

<https://hccr.court.gov.in/hccr/cases/> Petitioner's side of merits and the same is liable to be dismissed.



7. In view of the above discussions, the Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

WEB COPY

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Judicial Magistrate,
Alangulam.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.A.SIVASUBRAMANIAN, Advocate (SR-89159[F] dated 25/09/2019)

+1 CC to Mr.H.ARUMUGAM, Advocate (SR-89152[F] dated 25/09/2019)

Crl.O.P.(MD)No. 8029 of 2019
24.09.2019

ksa

MK (31.10.2019) 3P 5C