



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 05.09.2019

CORAM:

WEB COPY

THE HON'BLE MR.JUSTICE N. ANAND VENKATESH

Crl.O.P.(MD).No.2729 of 2017

and

Crl.M.P(MD)Nos.2088 and 2089 of 2017

Senguttuvan

... Petitioner

Vs.

P.Malaichamy

...Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the complaint in C.C.No.265 of 2014 filed under Section 190, 200 of Cr.P.C. on the file of the learned Judicial Magistrate No.II, Madurai and quash the same as illegal.

For Petitioner : Mr.S.M.A.Jinnah

For Respondent : Mr.V.P.Rajan

O R D E R

This petition has been filed seeking to quash the private complaint instituted by the respondent against the petitioner and his wife before the Court below for an alleged offence under Sections 120(B), 406, 420, 468, 471 and 473 of IPC.

2. The respondent / complainant has alleged in the complaint that he gave a hand loan to A1 on 18.10.2012 for a sum of Rs.6,00,000/-. This loan was given after one Gopal had introduced A1 to the respondent / complainant. In the guise of repaying the said loan, A1 is said to have issued a cheque in favour of the respondent / complainant for a sum of Rs.5,10,000/-. When the cheque was presented in the Bank, the same was returned with an endorsement ''duplicate cheque'' on 21.03.2013.

3. The complainant came to know that the cheque that was given to him, was a duplicate cheque, only after seeing the return memo issued by the Bank. It is further alleged in the complaint that the petitioner, who has been added as A2 and who is the husband of A1, is also involved in the conspiracy and he had promised to the complainant that the amount will be settled within a short time and it was never settled.



4.The Court below had taken cognizance of the complaint against both A1 and A2 and issued process under Section 204 of Cr.P.C.

5. The learned counsel for the petitioner submitted that even if the entire allegations made in the complaint are taken as it is, no offence has been made out as against the petitioner. He further submitted that the petitioner has been added as an accused only on the ground that he happens to be the husband of A1. The learned counsel concluded his arguments by submitting that there was a misunderstanding between the petitioner and his wife and it ultimately ended in the dissolution of marriage. Therefore, the learned counsel wants this Court to quash the proceedings insofar as the petitioner is concerned.

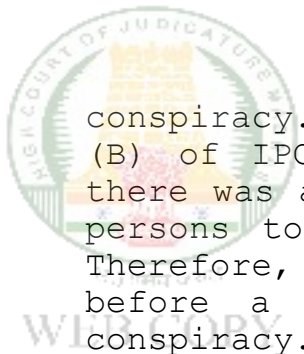
6. Per contra, the learned counsel appearing on behalf of the respondent submitted that there are allegations made against the petitioner in the complaint to the effect that the petitioner was also involved in the conspiracy along with A1. He further submitted that the petitioner had promised to the complainant that the amount will be settled within a short time and thereafter, the same was never settled. Therefore, the learned counsel submitted that the petitioner has to necessarily face the trial and establish his defence before the Court below.

7. This Court has carefully considered the submissions made on either side and the materials available on record.

8. A careful reading of the complaint reveals the fact that the actual transactions took place only between the respondent / complainant and A1. A1 seems to have been introduced to the respondent / complainant by one Gopal and the complainant has given a hand loan for a sum of Rs.6,00,000/- to A1. Out of this amount, a sum of Rs.90,000/- was repaid by A1 and for the balance amount of a sum of Rs.5,10,000/-, a cheque was issued by A1 in favour of the complainant. This cheque turned out to be a duplicate cheque and therefore, a private complaint has been filed before the Court below.

9. The petitioner, who is the husband of A1, has been made as accused only on the ground that he was aware about the hand loan that was given by the complainant to A1 and he was also aware about the cheque that was issued by A1 to the complainant. Therefore, the complaint proceeds as if the petitioner is involved in conspiracy with A1 and thereby, a duplicate cheque was issued by A1 to the complainant in connivance with the petitioner.

10. As rightly contended by the learned counsel for the petitioner, even if the allegations made in the complaint is taken as it is, no offence is made out against the petitioner. Merely because a person is aware of a transaction that happens between two persons, it cannot be presumed that he is involved in the



conspiracy. To make out an offence of conspiracy under Section 120 (B) of IPC., there must be some material available to show that there was an agreement or understanding between two or more accused persons to do an illegal act or to do an act by illegal means. Therefore, the mental element must be exhibited by some materials before a person can be roped in for an offence of criminal conspiracy. The said mental element is completely missing in this case as against the petitioner.

11. In the considered view of this Court, the proceedings against the petitioner is an abuse of process of Court and the same requires interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

12. In the result, the proceedings in C.C.No.265 of 2014, on the file of the learned Judicial Magistrate No.II, Madurai, is hereby quashed insofar as the petitioner is concerned.

13. Accordingly, this Criminal Original Petition is allowed and the learned Judicial Magistrate No.II, Madurai, is directed to complete the proceedings in C.C.No.265 of 2014, insofar as the other accused person is concerned, within a period of three months from the date of receipt of copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

vsd

To

The Judicial Magistrate No.II, Madurai.

+1 CC to M/s.S.M.A.JINNAH, Advocate (SR-85535[F] dated 06/09/2019)

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