

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 13.01.2020
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.Nos.19174 & 19175 of 2013
and
M.P Nos.1 & 1 of 2013

N.Swaminathan ... Petitioner in
Crl.O.P No.19174 of 2013/Accused
1.Dinesh
2.Rajesh ... Petitioners in
Crl.O.P No.19175 of 2013/Accused 1&2

Vs.

K.Subramaniam ... Respondent
in both Crl.O.Ps./Complainant

Prayer:

Petitions filed under Section 482 of Cr.P.C., to call for the records in the complaint filed by the Respondent in C.C.388 of 2013 on the file of the Learned Judicial Magistrate, Tambaram and quash the same as against the petitioners.

For Petitioners : Mr.V.Gopinath, SC
in both Crl.O.Ps For Mr.P.H.Manoj Pandian

For Respondent : Mr.T.R.Ravi
in both Crl.O.Ps

C O M M O N O R D E R

These Criminal Original Petitions have been filed to call for the records in the complaint filed by the Respondent in C.C.388 of 2013 on the file of the Learned Judicial Magistrate, Tambaram and quash the same.

2. The petitioner in Crl.O.P No.19174 of 2013 and the petitioner in Crl.O.P No.19175 are arrayed as A1 and A2 in the private complaint filed by the Respondent in C.C.No.388 of 2013 for the offences under Sections 406, 420, 468, 471, 120(B), 294 (b) and 506(ii) of IPC and Sec. 4 of Prohibition of Exorbitant Interest Act. A3 is friend of A1 and A2, who has filed a private complaint against the respondent under Section 138 of Negotiable Instruments Act in C.C No.306 of 2012.

3. The case of the respondent / complainant is that he borrowed a loan of Rs.10,00,000/- from A1 and A2 for his business needs on 09.09.2009. At that time, A1 and A2 collected the signed blank cheques bearing Nos.182663 & 182664, signed blank letterheads and signed blank promissory notes from the respondent. Subsequently, as per the terms of oral agreement between the respondent and the accused as on 11.01.2010, he repaid the entire amount. On the same day, after clearing the entire loan, the respondent again requested a fresh loan of Rs.10,00,000/-. A1 and A2 gave Rs.6,50,000/- to the respondent after deducting Rs.3,50,000/- towards advance interest. The respondent/complainant had repaid the said amount by way of instalment and the last instalment was paid by him on 14.08.2010. After repaying the entire loan amount, the respondent demanded A1 and A2 to return all the documents which were handed over to them on 09.09.2009. Contrary to the agreement between the complainant and A1 and A2, they demanded Rs.1,00,000/- as a condition precedent for the return of the above documents. Thereafter, on 13.10.2010, the 3rd accused who is utterly a stranger gave a notice demanding the respondent/complainant to repay Rs.1,00,000/- as if he gave the said sum to the respondent on 21.04.2010 and that the cheque bearing No.182664 dated 28.09.2010 drawn on Indian Overseas Bank, West Tambaram Branch, Chennai-45 given by the complainant to him was returned on 01.10.2010 with an endorsement "funds insufficient". Thereafter, the respondent gave a reply to the aforesaid notice on 23.10.2010 refusing the claim of A3 that the aforesaid cheque was given to A1 and A2, at the time of borrowal and the entire loan was repaid by him. Subsequently, the respondent lodged a complaint on 08.03.2011 with the Inspector of Police, Tambaram and registered a case. The Inspector of Police instead of conducting a proper enquiry, for obvious reasons, threatened the complainant and obtained his signature in a blank paper directing him to seek remedy before the appropriate Court. Therefore, the respondent filed a petition in CrI.O.P No.13492 of 2011 before this Court and the respondent was ordered to move the Court by a private complaint, against all the three accused for having committed offences under Section 406, 420, 468, 471, 120(b), 294(b), 506(ii) of IPC and 4 of Prohibition of Exorbitant Interest Act.

4. Mr.Gopinath, the learned Senior Counsel appearing for the petitioners submits that admittedly, the respondent/complainant borrowed the loan amount from A1 and A2 on two occasions i.e on 09.09.2009 and 11.01.201 and initially, the entire amount was also settled. But, thereafter, the respondent/complainant had borrowed a sum of Rs.1,00,000/- from A3 and issued a cheque which was dishonoured and therefore, A3 filed a complaint under Section 138 of Negotiable Instruments Act in C.C No.306 of 2012. But, in order to defeat the claim of A3, a false case was

registered against the petitioners in the year 2011. Even on a bare perusal of averments in the complaint, the complaint was initiated against the petitioners after lapse of 3 years. The said impugned complaint filed is unsustainable one and in order to defeat the claim of A3 under Section 138 of Negotiable Instruments Act, the impugned complaint has been filed. Accordingly, he prays to allow these two criminal original petitions.

5. Mr.Ravi, the learned counsel appearing for the respondent submits that admittedly, the entire amount was settled on 14.08.2010. However, one of the cheque was misused by A1 and A2 and the same was handed over to A3 and thereafter, A3 had filed a complaint. He would further submit that all the issues are triable issues which is not to be decided in these criminal original petitions. Accordingly, he prays for dismissal.

6. The crucial point involved in this case is whether the complaint has been filed by the respondent, before the private complaint filed by A3 under Section 138 of Negotiable Instruments Act or after the complaint? Admittedly, after issuance of legal notice dated 13.10.2010, A3 has filed a complaint under Section 138 of Negotiable Instruments Act against the respondent in C.C No.306 of 2012 on 10.12.2010. Thereafter, the respondent had allegedly given a complaint before the Inspector of Police, Tambaram on 08.03.2011 stating that the cheque which is the subject matter of the complaint in C.C.No.306 of 2012 was given to the petitioners to secure the loan availed by the complainant and the same is being misused by A3 at the behest of A1 and A2 and therefore, the Law Enforcing Agency called for an enquiry. In the enquiry, no offence was made out and the said complaint was closed. Thereafter, the respondent approached this Court in Crl.O.P No.13492 of 2012 and recording the closure report, the said Crl.O.P was closed. However, liberty was granted to the petitioners to file a private complaint.

7. The materials available on record reveal that the complaint was lodged before the respondent police after filing of the complaint u/s.138 of Negotiable Instruments Act. Though it is the stand of the respondent herein that the cheque was issued to A1 and A2, however, there is no whisper why after payment of the due to A1 and A2, the respondent has not taken back the cheque or made any complaint. However, this Court, at this point of time, is not inclined to go into the said issue. The materials on record reveal that the police complaint was filed and after enquiry, the same was closed, against which the impugned private complaint has been filed.

8. It is evident from the materials that once the complaint

u/s.138 of the Negotiable Instruments Act has been taken on file, if the respondent has any grievance, it is for him to ventilate the same before the trial in the said case and the respondent cannot file a complaint to defeat the claim made under the Negotiable Instruments Act. In view of the above, this Court is of the considered view that the present complaint deserves to be quashed.

9. Accordingly, this Criminal Original Petition is allowed and the complaint in C.C No.388 of 2013 on the file of the Learned Judicial Magistrate, Tambaram, is hereby quashed. However, the trial Court is directed to proceed with the trial in C.C No.306 of 2012 without in any way influenced by any observation made by this Court above and decide the case and pass orders in accordance with law. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Cj conf)

//True Copy//

Sub Assistant Registrar

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To
The Judicial Magistrate,
Tambaram.

+lcc to Mr.Anand , Advocate SR.No. 3384
+lcc to Mr.T.R.Ravi , Advocate SR.No. 3289

CrI.O.P.Nos.19174 & 19175 of 2013
and M.P Nos.1 & 1of 2013

A.SK(26/02/2020)

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