

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.1542 of 2020 and

Crl.MP.Nos.972 & 973 of 2020

M.Sekar

... Petitioner

Vs.

H.Saleem

... Respondent

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., praying to call for the records pertaining to the complaint in STC.No.198 of 2019 on the file of the learned Judicial Magistrate No.II, Thiruvallur and quash the same.

For Petitioner : Mr.R.Selvakumar

For Respondent : No appearance

O R D E R

The petition has been filed to quash the proceedings in STC.No.198 of 2019 on the file of the learned Judicial Magistrate No.II, Thiruvallur having been taken cognizance for the offences punishable under Sections 138 and 142 of Negotiable Instruments Act.

2. The learned counsel for the petitioner would submit that there are two accused, in which the petitioner is arrayed as second accused. The respondent filed complaint alleging that the first and second accused are husband and wife and they were being customers to the finance agency, they are known to the complainant. While being so, they approached the respondent complainant seeking loan to the tune of Rs.12 lakhs. On execution of pronote, the respondent lent a sum of Rs.12 lakhs to the accused persons. In order to repay the same, the first accused issued three cheques for a total sum of Rs.12 lakhs dated 25.09.2018, 28.09.2018 and 30.09.2018. All the cheques were deposited for collection and returned dishonoured for the reason "funds insufficient" and after issuance of statutory notice under Section 138 of Negotiable Instruments Act lodged the complaint. The alleged cheques were issued by the first accused for the loan borrowed by them. He further submitted that as far as the petitioner is concerned, except the relationship that he is the husband to the first accused, he is no way connected to the cheques issued by the first accused. Even according to the defacto complainant, the signatory of the cheque is the first accused and as such the the petitioner / second accused is not at all liable to be prosecuted for the offence under Section 138 of Negotiable Instruments Act. Therefore, he sought for quashment of the proceedings as against the petitioner.

3. Heard, Mr.R.Selvakumar, learned counsel for the petitioner. Though notice was served to the respondent and printed the name of the respondent herein, no one appeared on behalf of the respondent through pleader or by person.

4. It is seen that the respondent lodged complaint as against the petitioner and another for the offences punishable under Section 138 of Negotiable Instruments Act. The petitioner is the husband of the first accused, and the petitioner is arrayed as A2. According to the complainant, both the accused A1 and A2 who are husband and wife, approached the defacto complainant and borrowed a sum of Rs.12 lakhs. In order to repay the same, the first accused issued three cheques for a sum of Rs.12 lakhs, and all the cheques were presented for collection and the same were returned dishonoured for the reason "funds insufficient". Therefore, even according to the defacto complainant, the first accused only issued cheques and she is the signatory to the cheques. Insofar as the petitioner / second accused is concerned, except the relationship of husband to the first accused, he has nothing to do with the present complaint as alleged by the respondent for the offences punishable under Section 138 of Negotiable Instruments Act. In fact, the first accused alone executed promissory note while borrowing loan from the defacto complainant in favour of the respondent defacto complainant. Therefore, the present complaint as against the petitioner is nothing but clearly abuse of process of court and it cannot be sustained as against the petitioner.

5. In view of the above discussion, this Criminal Original Petition is allowed, and the proceedings in STC.No.198 of 2019 on the file of the learned Judicial Magistrate No.II, Thiruvallur is quashed as against the petitioner alone. As such, the trial court is directed to proceed with the trial as against the first accused and complete the same within a period of six months from the date of receipt of copy of this Order. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)
//True Copy//

Sub Assistant Registrar

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To

The learned Judicial Magistrate No.II,
Thiruvallur

Cr1.O.P.No.1542 of 2020