IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.OP.No.2134 of 2020
and Crl.MP.Nos.1321 & 1322 of 2020

S.Mani ... Petitioner/Accused

Vs.

M/s. Muthoot Fincorp Limited
Registered office at
Muthoot Centre, Punnen Road,
Trivandram, Kerala – 695001.
Zonal Office at 1st Floor,
Navins Presidium, Nelson Manikkam Road,
Aminjikarai, Chennai – 29
Rep by its authorized signatory
Mr.Mohanan John ... Respondent

Prayer : Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records and quash the proceedings as against the petitioner in STC.No.368 of 2019 pending on the file of the Fast Track Court Magesterial Level – II, Poonamallee.

For Petitioner : Mr.S.Sairaman

For Respondent : Mr.T.Sai Krishnan

ORDER

(Heard through Video Conferencing)

The petitioner, who is the accused in 138 proceeding initiated by the respondent in STC.No.368 of 2019, pending on the file of Fast Track Court Magesterial - II, Poonamallee, filed this quash petition.

2. The gist of the case is that the respondent has filed a private complaint for the offence under Sections 138 of the Negotiable Instruments Act, 1881, it is seen that there was some business undertaking between the petitioner and the respondent for which the petitioner availed loan facility from the respondent who is the Muthoot Fincorp Limited and the respondent extended a business loan of Rs.2,00,00,000/- (Rupees Two Crores) and the petitioner executed a personal guarantee, as well mortgage of property belonging to one

S.Mani, son of Solai Muthu situated at Yashini Khan Street ESSA Pallavaram vide agreement dated 30.07.2016 as per the Deed of Guarantee dated 27.07.2016. In repayment of the loan, a cheque bearing No.512737 dated 31.12.2018 for the amount of Rs.3,00,000/- drawn on Catholic Syrian Bank, Pallavaram Branch was handed over by the petitioner. This cheque was returned for the reason 'funds insufficient' by the Indian Bank, Poonamallee dated 01.02.2019. Thereafter, statutory notice was issued on 18.02.2019 and the same was returned unclaimed by the petitioner on 23.02.2019. By following the statutory procedure, a complaint was filed on 08.04.2019.

3. The contention of the petitioner is that the petitioner availed business loan from the respondent. The loans were repaid, there was some dispute with regard to repayment of interest. According to the petitioner, the respondent has initiated SARFAESI proceeding against the petitioner, attaching the mortgage property. The petitioner has approached DRT, by order dated 24.12.2019, DRT - III ordered the petitioner to deposit a sum of Rs.50 Lakhs to the credit of the loan account lying with the respondent Company within a stipulated time. The petitioner was granted stay of attachment proceedings. Thereafter, the petitioner could not deposit the entire Rs.50 Lakhs within in time but he paid Rs.30 Lakhs and approached the DRT again for extension of time, DRT on 13.01.2020 permitted the petitioner to deposit the balance amount of Rs.20 Lakhs on or before 03.02.2020 and this amount was deposited by the petitioner and the proceedings between the petitioner and the respondent is still pending in DRT. According to the petitioner, the cheque amount of Rs.3,00,000/- has been covered in the repayment of part loan of Rs.50 Lakhs as per order of DRT, hence, prayed for quashing of the complaint.

4. The learned counsel appearing for the respondent submitted that it is admitted by the petitioner that he had availed a loan facility from the respondent and the receipt of loan, execution of guarantee which are not in dispute. The dispute is only with regard to the rate of interest. The contention of the petitioner that liability of cheque is discharged and cannot be accepted for the simple reason that the cheque in question is dated 31.12.2018 and the same was presented and got returned on 01.02.2019 against which the statutory notice was issued on 18.02.2019. Thereafter, following the statutory procedure, complaint came to be filed on 08.04.2019. The DRT proceeding in which the petitioner got relaxation was on 24.12.2019 and the second order was on 13.01.2020 which is subsequent to the dishonoring of the cheque. There is no mention or any contention about the dishonor of cheque in the DRT proceedings.

5. Considering the submissions made and on perusal of the materials, it is seen that the contention of the petitioner cannot be considered for the reason that cheque was

issued earlier to the DRT proceeding and there is no mention about the petitioner issuance of cheque in question before the DRT, the amount of Rs.50 Lakhs deposited on the orders of DRT is only a part amount of the loan/mortgage dues. Balance is still to be paid by the petitioner. In view of the same, it is found that the contention of the petitioner cannot be countenanced, hence the criminal original petition is dismissed. Connected criminal miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

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To

1.M/s. Muthoot Fincorp Limited,
Rep by its authorized signatory
Mr.Mohanan John
Registered office at Muthoot Centre, Punnen Road,
Trivandram, Kerala - 695001.
Zonal Office at 1st Floor,
Navins Presidium, Nelson Manikkam Road,
Aminjikarai, Chennai - 29.

2.Fast Track Court Magesterial Level - II,
Poonamallee.

Crl.OP.No.2134 of 2020

SR(CO)
GMY(28/10/2020)