IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.09.2020

Pronounced on : 09.10.2020

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.OP.No.9326 of 2018
and Crl.MP.No.4809 of 2018
and Crl.MP.No.9773 of 2019

M.Santhanamary ... Petitioner / Accused

Vs.

Karthik Sivaraman
Represented by his Power of Attorney
Mr.M.S.Ramesh ... Respondent / Complainant

Criminal Original Petition filed under Section 482 Cr.P.C., praying to call for the records and quash the case in C.C.No.1061 of 2016 on the file of the III Fast Track Court, Saidapet, Chennai.

For Petitioner : Mr.K.Sathyabal

For Respondent : Mr.B.Vijay

ORDER

This case was heard through video conferencing.

2. For the sake of convenience, the parties would be referred to as the complainant and the accused.

3.1 The case of the complainant (Karthik Sivaraman) is that he, his wife Padma Karthik and one Mrs.Radha Ramesh are the absolute owners of the Flat No.402, in 'Surendra Homes', at Door No.1, Pammal Main Road, Pallavaram, Chennai - 600 043 and that Arokiaraj, the husband of the accused had approached him, sometime in the month of September 2014 for purchase of the said property, and the sale was concluded at Rs.85 lakhs. Thereafter, the complainant and other owners of the property executed a sale deed in favour of Arokiaraj (husband of the accused) on 24.12.2014, and towards the sale consideration of

Rs.85 lakhs, received three cheques viz., Ch.No.072014 for Rs.25 lakhs; Ch.No.169455 for Rs.20 lakhs, and Ch.No.169456 for Rs.40 lakhs, all drawn on Tamil Nadu Mercantile Bank. Of which, two cheques (Ch.No.169455 & 169456) were signed by Arokiaraj, and impugned cheque bearing No.072014 was signed by the accused. The dates in the cheques were not filled by the accused or by her husband, and they have requested the owners of the property to present the cheques only when they make arrangement for clearance of the cheques.

3.2 On 30.11.2015, the accused herself had contacted Karthik Sivaraman, and instructed him to present the impugned cheque and accordingly, Karthik Sivaraman filled the date in the cheque bearing No.072014 for Rs.25 lakhs and presented it on the same day for clearance. This cheque was returned by the Bank vide Return Memo dated 02.12.2015 indicating "insufficient funds". Since the attempts made by him to approach the accused, went in vain, he issued a legal notice dated 28.12.2015, requiring the accused to pay the sum of Rs.25 lakhs and this notice was delivered to the accused on 30.12.2015.

3.3 Thereafter, Karthik Sivaraman represented by her Power Agent Mr.M.S.Ramesh initiated a prosecution in C.C.No.1061 of 2016, (originally before the Judicial Magistrate No.IX, Saidapet) which is now pending on the file of the III Fast Track Court, Saidapet, Chennai, for the offence under Section 138 of the Negotiable Insturments Act, 1881, against the accused, and to quash the said case, the accused has preferred the present criminal original petition.

4. Heard Mr.K.Sathyabal, learned counsel appearing for the accused and Mr.B.Vijay, learned counsel appearing for the respondent.

5. Mr.K.Sathyabal, learned counsel appearing for the petitioner/accused contended that the impugned cheque bearing No.072014 was issued on 24.12.2014, but it was presented for clearance by the complainant only on 30.11.2015, which is after its validity.

6. Per contra, Mr.B.Vijay, learned counsel appearing for the respondent/complainant contended that the impugned cheque is dated 30.11.2015, and not 24.12.2014. He further contended that while executing the sale deed on 24.12.2014, the accused gave the impugned cheque along with two other cheques, signed by her husband, all undated cheques, and that only on the instructions of the accused, the complainant has presented the impugned cheque for clearance on 30.11.2015 in Canara Bank, Kasturba Nagar Branch, Chennai, after duly filling up the date as 30.11.2015.

7. This Court gave its anxious consideration to the rival submissions.

8. A reading of the statutory demand notice of the complainant shows that the complainant had not suppressed the fact that the impugned cheque was handed over to him on 24.12.2014, but, as contended, it was an undated cheque and the date was filled by him, only after the accused gave clearance for presenting it.

9. Mr.K.Sathyabal, learned counsel for the petitioner/accused took this Court through the pleadings in the connected suit between the parties to show that there are contradictions in the stand of the complainant.

10. In the opinion of this Court, the pleadings in the connected suit cannot be gone into in a proceedings under Section 482 Cr.P.C. That apart, information called for from the trial Court shows that in C.C.No.1061 of 2016, P.W.1 was examined in chief on 15.09.2016; the accused was examined under Section 313 Cr.P.C., on 20.10.2016; the accused filed an application under Section 311 Cr.P.C., on 15.06.2017, for recalling P.W.1, which was allowed on 02.08.2017. Only thereafter, the accused had filed the present quash petition in Crl.OP.No.9326 of 2018 on 22.03.2018, and has obtained an order of stay on 03.07.2018. Thus, it is apparent that the trial has reached an advanced stage, and this was not brought to the notice of this Court by the accused in the present quash petition. It is pertinent to state here that the cheque was not returned on the ground that it was time barred but on the ground of insufficiency of funds.

11. In such view of the matter, disputed facts cannot be gone into in the present quash petition. This petition is devoid of merits and hence, dismissed. The petitioner is directed to appear before the trial Court and raise all the defences available to her in the manner known to law. Consequently, connected miscellaneous petition is closed.



Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To:

The Judge,
Fast Track Court No.III,
Saidapet, Chennai.

Crl.OP.No.9326 of 2018

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srg 21/10/2020