IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.2401 of 2020 and
CMP.Nos.1491 & 1492 of 2020

M/s.Sri Poornima Enterprises,
Authorised Signatories,
Mr.D.Shankar,
No.51, 2nd Floor, P&T Colony,
RT Nagar Post,
Bangalore 560 032

... Petitioner/Accused

Vs.

S.Mohan Kumar

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the connected records made in CC.No.8801 of 2019 on the file of Fast Track Court-1, Metropolitan Magistrate at Allikulam, Egmore, Chennai and quash the same

For Petitioner : Mr.R.Sankarasubbu

For Respondent : Mr.A.Damodaran

O R D E R

This petition is filed challenging the proceedings in CC.No.8801 of 2019 on the file of the learned Fast Track Court-I, Metropolitan Magistrate at Allikulam, Egmore, Chennai having been taken cognizance for the offence punishable under Section 138 of Negotiable Instruments Act.

2. The learned counsel for the petitioner would submit that the petitioner is the accused in the complaint lodged by the respondent for the offence punishable under Section 138 of NI Act. He further submitted that the petitioner approached one Bharath Kumar Dugar to avail loan for the business purpose to the tune of Rs.3 crores. The said person lent a sum of Rs.3 crores as loan and also entered into registered sale agreement for seven flats. He also received 10 unfilled signed cheques of YES bank and also four unfilled signed cheques of HDFC bank from the petitioner. The cheques

which were given as security to the said Bharath Kumar Dugar bearing No.000299 drawn on HDFC Bank was misused and it was handed over to one of his relatives, namely the respondent herein. The said cheque was presented for collection and proceeded with the complaint.

2.1 He further submitted that the petitioner had absolutely no transaction with the respondent and the said cheque was never issued for any legally enforceable debt. He further submitted that on receipt of statutory notice, the petitioner issued reply notice dated 23.05.2019 and categorically stated that the petitioner has absolutely no liability and never had agreed to settle the amount as alleged in the complaint and as such no question of discharging any legally enforceable liability. In fact, the petitioner also sent another notice dated 30.05.2019 call upon the respondent to withdraw the notice issued to the petitioner for the reason that the alleged cheque was misused by the respondent. Further stated that the alleged cheque was issued to the said Bharath Kumar Dugar in a good gesture but deliberately the said cheque was handed over to the respondent herein and his daughter. He further submitted that the business transaction is between only the petitioner and the said Bharath Kumar Dugar and it is also evident from the sale agreement entered between the petitioner and the said Bharath Kumar Dugar. At the time of executing the sale agreement, the alleged cheque along with other cheques were handed over for security purpose. Therefore, he prayed for quashment of the entire proceedings initiated by the respondent.

3. Per contra, the learned counsel for the respondent would submit that the respondent and her daughter are having joint account with their banker, Axis Bank. Only from their account, the loan amount has been disbursed through RTGS to the petitioner herein. Thereafter as agreed by the petitioner, he repaid only the first instalment on 29.11.2018 and thereafter he did not repay the said amount. Therefore, in order to repay the entire amount, the petitioner issued the cheque for a sum of Rs.3,50,00,000/- and the same was presented for collection. The said cheque was returned dishonoured for the reason “funds insufficient”. Therefore, after causing statutory notice, complaint under Section 138 of NI Act was filed. He further submitted that in the statutory notice, clearly mentioned about the transaction between the petitioner and the respondent herein. Only from the joint account of the respondent and her daughter, Bhavika M.Jain account No.916020036477063 from Axis Bank, Purasawalkam Branch, Chennai, a sum of Rs.3 crores was transferred to the account of the petitioner herein through RTGS. Therefore, the petitioner borrowed the amount only from the respondent herein and as such he is liable to be punished under Section 138 of NI Act. He further submitted that the

disputed questions of fact cannot be entertained by this Court under Section 482 of Cr.P.C. and prayed for dismissal of the quash petition.

4. Heard Mr.R.Sankarasubbu, learned counsel for the petitioner and Mr.A.Damodaran, learned counsel for the respondent.

5. The petitioner is the accused in the complaint lodged by the respondent herein for the offence under Section 138 of NI Act. According to the complainant, the petitioner M/s.Sri.Poornima Enterprises represented by its authorised signatory had approached the respondent to avail loan for the improvement of their business to the tune of Rs.3 crores. The respondent lent a sum of Rs.3 crores on 29.10.2018 through RTGS from the joint account hold by the respondent as well as his daughter. The petitioner agreed to return the same for interest rate payable at the rate of 12% per annum. The petitioner also executed promissory note in favour of the respondent herein. As per the agreement, the respondent repaid the first instalment of Rs.30 lakhs on 29.11.2018. Thereafter, the petitioner failed to repay the said sum. In order to settle the entire amount, the petitioner issued a cheque for a sum of Rs.3,50,00,000/- and the same was presented for collection. The said cheque was returned dishonoured for the reason “funds insufficient” and after causing legal notice, the respondent initiated proceedings for the offence punishable under Section 138 of NI Act.

6. On perusal of the documents produced by the respondent, it is crystal clear that a sum of Rs.3 crores had been transferred to the account of the petitioner from the respondent and her daughter's joint account on 29.10.2018. In fact, thereafter the petitioner also repaid the first instalment of Rs.30 lakhs on 29.11.2018 to the account of the respondent herein. Only to escape from the clutches of law, the petitioner herein created cock and bull story and produced so many documents before this Court and those are no way connected with the complaint as alleged by the respondent herein. That apart, the grounds raised by the petitioner are disputed question of facts and it cannot be considered by this Court that too, under Section 482 of Cr.P.C. Therefore, this petition is devoid of merits.

7. Accordingly, this Criminal Original Petition is dismissed. However, the personal appearance of the petitioner is dispensed with and he shall be represented by a counsel after filing appropriate application. The petitioner shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment. Further, the learned Fast Track Court-1,

Metropolitan Magistrate at Allikulam, Egmore, Chennai is directed to complete the trial in CC.No.8801 of 2019 within a period of nine 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

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To
The learned Fast Track Court-1,
Metropolitan Magistrate at Allikulam,
Egmore, Chennai.

CRL.O.P.No.2401 of 2020

PVS(CO)
RMP(27/11/2020)