IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.4401 of 2020
and Crl.M.P.Nos.2527 & 2529 of 2020

A.Thulasimani
S/o.Arumugam,
52, Sidhi Vinayagarkoil Stree,
Tambaram Sanatorium,
Chennai - 600 047. ...Petitioner

Vs.

K.Murugan
S/o.P.Kamaraj,
Managing Partner
M/s.5 Star Hotel,
Old No.830, New No.22,
G.S.T.Road,
Chennai - 600 047. ...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records pertaining to the complaint in C.C.No.415 of 2019, on the file of the learned Judicial Magistrate No.I, Tambaram and quash the same.

For Petitioner : Mr.D.Manimaran
For Respondent : Mr.K.Narayanan

ORDER

This petition has been filed to quash the proceeding in C.C.No.415 of 2019, on the file of the learned Judicial Magistrate No.I, Tambaram, thereby taken cognizance for the offences punishable under Sections 406 and 420 of IPC, as against the petitioner.

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2. The learned counsel appearing for the petitioner would submit that the petitioner is a sole accused in the private complaint lodged by the respondent herein and the same has been taken cognizance for the offences under Section 406 and 420 of IPC. He further submitted that on perusal of the entire complaint, no prima facie made out to attract any of the offences under Sections 406 and 420 of IPC as against the petitioner herein. The respondent is the close relative of the

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petitioner herein. The respondent and two others are partners and they are running hotel in a partnership basis in the name and style of 5 Star Hotel. The petitioner is running provision store and the respondent being a cousin brother, had started supplying provisions items for the hotel business. Initially, they purchased in a small quantity and later they purchased huge volume in order to create confidence on them.

2.1. While being so, the respondent and his partners started catering service and started buying provisions in a whole sale manner. They used to pay the amount in a whole sum or in part and settle the dues periodically. During the period December, 2018, the respondent requested to lend a sum of Rs.9,00,000/- for his business development and also for his family expenses and borrowed a sum of Rs.9,00,000/-. The respondent assured that it will be returned within a period of three months. Towards repayment of the part amount and also for the provisions purchased, the respondent issued a cheque for a sum of Rs.9,12,673/-. It was presented for collection on 11.04.2019 and the same was returned dishonoured for the reason that funds insufficient. After dishonour of the cheque, the petitioner caused statutory notice on 26.04.2019 and the same was duly acknowledged by the respondent on 02.05.2019.

2.2. He further submitted that after issuing statutory notice, the petitioner lodged complaint for the offence punishable under Section 138 of Negotiable Instruments Act as against the respondent in C.C.No.788 of 2019 before the learned Judicial Magistrate, Tambaram. Immediately, the respondent lodged the impugned complaint under Section 200 of Cr.P.C., and the learned Magistrate without even conducting any enquiry straight away had taken cognizance in C.C.No.415 of 2019 and issued summons to the petitioner. Therefore, the present complaint is nothing but counter blast for the complaint filed by the petitioner for the offences punishable under Section 138 of Negotiable Instruments Act. He further submitted that the respondent also issued two other cheques for the sum of Rs.9,41,177/- and Rs.9,14,174/- and all the above three cheques were presented for collection and returned dishonoured. Therefore, the petitioner proceeded with the complaint for the offences punishable under Section 138 of Negotiable Instruments Act as against the respondent. Therefore the present complaint is nothing but clear abuse of process of law and it is liable to be quashed.

3. Per contra, the learned counsel appearing for the respondent filed counter and submitted that the respondent already lodged complaint before the jurisdictional Police Station on 21.04.2019, before issuing statutory notice in the complaint lodged by the petitioner herein. He further submitted

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that admittedly the petitioner supplied provisions to the respondent for the past nine years and the respondent also periodically make payments without any delay. While being so, in the month of March 2019 and April 2019, for the provisions purchased, the respondent issued six cheques as follows :-

i. Cheque No.000094 dated 13.03.2019 for Rs.14,177/-
ii. Cheque No.000096 dated 19.03.2019 for Rs.12,673/-
iii. Cheque No.000101 dated 09.04.2019 for Rs.14,174/-
iv. Cheque No.000103 dated 14.04.2019 for Rs.14,460/-
v. Cheque No.000104 dated 14.04.2019 for Rs.14,979/-
vi. Cheque No.000107 dated 19.04.2019 for Rs.15,103/-

3.1. He further submitted that to the shock and surprise, the respondent received an information in his mobile from his banker that the cheque bearing No.000094 & 000096 and 000101 were dishonoured due to insufficient fund. Immediately, he approached the bank and noticed that the petitioner made some corrections in the cheque amount and filled the amount in words to enrich illegally. Therefore, the respondent requested his bank for stop payment for other cheques by letter dated 20.04.2019. Immediately, he also lodged complaint before the Inspector of Police, Chrompet and he was issued C.S.R.No.156 of 2019 on 21.04.2019. The respondent also sent legal notice dated 29.04.2019 to the petitioner herein thereby call upon him to return back all the cheques. On 02.05.2019, the respondent also received the statutory notice from the petitioner to pay the cheque amount. In fact for the said notice, the respondent also issued reply notice dated 16.05.2019 and categorically denied the issuance of the said cheques.

3.2. Thereafter, the Inspector of Police, Chrompet Police Station, did not take any action on the complaint lodged by the respondent as such, the respondent sent detail representation to the Commissioner of Police on 24.05.2019. Even then no action has been taken as such, the respondent had no other opinion, filed the private complaint for the offences punishable under Sections 406 and 420 of IPC. He further submitted that the learned Magistrate after recording the sworn statement of the respondent, had taken cognizance for the offences under Sections 406 and 420 of IPC and also issued summons to the petitioner herein. Therefore, all the grounds raised by the petitioner are mixed question of fact and it cannot be considered by this Court under Section 482 of Cr.P.C. and prayed for dismissal of the quash petition.

4. Heard Mr.D.Manimaran, learned counsel appearing for the petitioner, Mr.K.Narayanan, learned counsel appearing for the respondent.

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5. The petitioner is the sole accused in the complaint lodged by the respondent for the offences under Sections 406 and 420 of IPC. Admittedly, the petitioner and the respondent are close relatives. The respondent along with his partner is running hotel business in the name and style of 5 Star Hotel. The petitioner is running a provision store and used to supply the provisions to the respondent. According to the petitioner initially the respondent purchased small scale and later, he used to purchase huge quantity of provisions. Further he also used to borrow amount for development of his business and also for his personal expenses. Accordingly, the respondent borrowed loan and towards the repayment of the same, the respondent issued cheques dated 13.03.2019, 19.03.2019 and 09.04.2019. When the same were presented for collection, all were returned dishonoured for the reason insufficient fund, by return memo dated 12.04.2019. Therefore, the petitioner caused legal notices dated 26.04.2019 and 27.04.2019 to the respondent herein.

6. On the other hand, on receipt of the message from the bank, the respondent issued letter to stop payment in respect of other cheques which were issued by the respondent during the course of their business. Thereafter, the respondent lodged complaint before the Inspector of Police, S13, Chrompet Police Station, Chennai. On receipt of the same, the respondent was issued C.S.R.No.156 of 2019. Thereafter, the complaint was enquired after issuance of notice to the petitioner and the same was closed. The said fact revealed from the order dated 06.05.2019 passed by this Court in Crl.O.P.No.12243 of 2019. After receipt of the message and also statutory notice from the petitioner, the respondent again lodged police complaint and thereafter lodged the present impugned complaint as against the petitioner.

7. Admittedly, the respondent is facing prosecution for the offence punishable under Section 138 of Negotiable Instruments Act. According to the respondent, the amount of the cheques has been corrected and filled the amount in words to enrich illegally by the petitioner herein, since the respondent never issued any cheque to the said huge amount and he has also no legally enforceable debt towards the petitioner herein. Therefore, the respondent has no other option than to file private complaint to disprove the case of the petitioner's complaint filed for the offence punishable under Section 138 of Negotiable Instruments Act.

8. On perusal of records, the respondent lodged complaint on receipt of the message with regard to dishonour of cheques and the respondent also issued stop payment letter to his banker not to honour other cheques which were issued to the petitioner. Though the complaint lodged before the issuance of statutory

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notice by the petitioner herein, the said complaint was enquired and closed by the Inspector of Police, Chrompet Police Station. Thereafter, the respondent filed the impugned private complaint and the same has been taken cognizance for the offences punishable under Sections 406 and 420 of IPC by the trial Court. Therefore, the present complaint is nothing but counter blast to the complaint lodged by the petitioner for the offence punishable under Section 138 of Negotiable Instruments Act as against the respondent herein.

9. If at all, the allegations made in the impugned private complaint by the respondent are true, the respondent can very well file a petition for hand writing expert opinion under Section 43 of Evidence Act, in the manner know to law. He can also disprove the case of the petitioner by cross examine the petitioner in respect of said allegations and also by let in evidence. That apart, the respondent can very well invoke the provision under Section 87 of the Negotiable Instruments Act as against the petitioner. If the allegations made by the respondent are proved before the trial Court in the complaint lodged by the petitioner, the respondent can very well proceed as against the petitioner in accordance with law. At this stage, it is premature and without any single piece of evidence, no cognizance can be taken as against the petitioner for the allegations that the petitioner corrected the amount and also filled the amount in words to enrich illegally. Therefore, the impugned private compliant is nothing but clear abuse of process of Court and it cannot be sustained as against the petitioner.

10. Accordingly, this Criminal Original Petition stands allowed and the proceedings in C.C.No.415 of 2019, on the file of the learned Judicial Magistrate No.I, Tambaram, is hereby quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Judicial Magistrate No.I,
Tambaram
+1cc to M/s.D.Manimaran, Advocate in SR.NO..30905

CRL.O.P.No.4401 of 2020 and
Crl.M.P.Nos.2527 & 2529 of 2020

MTI(CO)
RV(27/11/2020)

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