IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.4573 of 2020 and
Crl.M.P.Nos.2613 & 2615 of 2020

M.Tamizhselvy
W/o.Murugaiyan ... Petitioner/Accused

Vs.

R.Baskaran
S/o.E.Ranganathan ...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records in S.T.C.No.1535 of 2019 pending on the file of the Judicial Magistrate No.II, Puducherry and quash the same.

For Petitioner : Mr.A.Kripakaran

For Respondent : Mr.Sakthi Manikandan

O R D E R

The Criminal Original Petition has been filed to quash the proceeding in S.T.C.No.1535 of 2019 pending on the file of the Judicial Magistrate No.II, Puducherry, thereby taken cognizance for the offences punishable under Sections 138 and 142 of Negotiable Instruments Act (herein after referred to as NI Act), as against the petitioner.

2. The learned counsel for the petitioner would submit that the alleged cheques were presented for collection on 03.01.2019, and the same were returned dishonored on 05.01.2019, for the reason "Insufficient Funds". Even then, the respondent did not cause any statutory notice. Further without any instructions from the petitioner again the same were presented for collection and returned for the reason that "Code-5:Kindly contact Drawer/Drawee Bank" by the return memo dated 25.02.2019. As per the Reserve Bank of India guidelines, it is very clear that Non-CTS cheques will not be cleared from 01.01.2019 and as such the alleged cheques were returned by the banker for the above said reason. The alleged cheques were issued to the petitioner by her banker only on 06.06.2008. Therefore, the

petitioner never issued the alleged cheques to the respondent herein for any legally enforcible debt. In fact by the reply notices dated 03.04.2019 and 05.04.2019, the petitioner categorically denied all the allegations as alleged by the respondent herein and further stated that the alleged cheques were given by the petitioner in the year 2019. At that time, there was no Core Banking System adopted by the Karnataka Bank Limited and as such six digit numbers only therein the cheques issued by the petitioner herein.

2.1. He further submitted that the respondent's father one E.Ranganathan is well known to the husband of the petitioner herein who is practicing Advocate at Pondicherry. He conducted several cases and lastly he appeared in O.S.No.1125 of 2011 on the file of the Principal District Munsif Court, Pondicherry. Therefore, the respondent and his father are having acquaintance with the petitioner's husband. In the year 2008, the petitioner borrowed a sum of Rs.5 lakhs from the respondent's father for the monthly interest and while borrowing the said loan, the petitioner issued two unfilled signed cheques, drawn at Karnataka Bank Limited. Thereafter, the petitioner discharged the entire loan amount on 12.03.2009 and to that effect, the respondent's father also issued receipt dated 12.03.2009, in favour of the petitioner herein. After discharging the entire loan amount by the petitioner, she repeatedly requested the respondent's father to return the said cheques. But the respondent's father informed that the cheques were misplaced and having utmost good faith the petitioner did not insist the same. Therefore, the alleged cheques were never issued by the petitioner for any legally enforcible debt. On receipt of the reply notice, the respondent did not reply by any rejoinder. In support of his contention, he relied upon the order of this Court dated 24.07.2019 passed in Crl.O.P.No.10406 of 2019 in the case of Sathiyamurthi Vs. Kesava Narayanan and sought for quashment of the proceedings.

3. Per contra, the learned counsel appearing for the respondent would submit that the petitioner borrowed a sum of Rs.3 lakhs for her son's marriage. Towards repayment of the said loan, the petitioner issued two cheques for the sum of Rs.1.5 lakhs each. Both the cheques were presented for collection on 03.01.2019 and the same was returned dishonored for the reason "Insufficient Funds". It was duly informed to the petitioner and on the request of the petitioner, again both the cheques were re-presented for collection and on such deposit, both the cheques were again returned dishonored for the reason "Code-5:Kindly contact Drawer/Drawee Bank". Therefore, immediately the respondent caused legal notice on 21.03.2019 and the petitioner also issued reply notice with false and frivolous allegations.

3.1. He further submitted that though the cheques were returned dishonored for the reason, "Code-5:Kindly contact Drawer/ Drawee Bank", Section 138 of the Negotiable Instruments Act is clearly attracts as against the petitioner herein. The petitioner was knowing fully well that the cheques are non-CTS cheques and from 01.01.2019 onwards non-CTS cheques cannot be cleared for collection, she has issued the cheques. He further submitted that all the grounds raised by the petitioner cannot be considered by this Court under Section 482 of Cr.P.C., and the same are mixed question of fact and it can be considered only during trial before the trial Court. Therefore, he prayed for quashment of the Criminal Original Petition.

4. Heard Mr.A.Kripakaran, learned counsel for the petitioner and Mr.Sakthi Manikandan, learned counsel for the respondent and also perused the materials available on record.

5. The petitioner is an accused on the complaint lodged by the respondent herein for the offences punishable under Sections 138 and 142 of NI Act. According to the respondent, the petitioner borrowed a sum of Rs.3 lakhs and towards repayment of the same, the petitioner issued two cheques for a sum of Rs.1.5 lakhs each. Both the cheques were presented for collection and initially both the cheques were returned for the reason "Insufficient Funds". Again on the instruction given by the petitioner, the cheques were presented for collection and again and it was dishonored for the reason that "Code-5:Kindly contact Drawer/Drawee Bank". After issuing statutory notice, the respondent initiated proceedings for the offence under Sections 138 and 142 of NI Act.

6. On receipt of the statutory notice dated 21.03.2019, the petitioner issued reply notices on 03.04.2019 and 05.04.2019. In the reply notice, she stated that the respondent's father, who was practicing advocate at Pondicherry, is well acquainted with the husband of the petitioner herein. Therefore, in the year 2008, the petitioner borrowed a sum of Rs.5 lakhs by mortgaging her property to the respondent's father for monthly interest. Thereafter on 12.03.2009 the entire loan amount was discharged by the petitioner with interest. The respondent's father also issued receipt for discharging the entire loan amount. Further on receipt of the reply notice, the respondent did not replied by way of rejoinder. While borrowing the said loan, the petitioner also issued two signed unfilled cheques as security. After discharging the loan amount, the respondent's father also issued acknowledgment that entire loan amount settled by the petitioner. Thereafter the respondent's father failed to return the two cheques, which were received from the petitioner as security.

7. It is also evident from the endorsement made by the respondent's bank while returning the cheques, it is mentioned as "Code-5:Kindly contact Drawer/Drawee Bank". Since the alleged cheques are non-CTS cheques and as such, it cannot be cleared by the banker as per the Reserve Bank of India guidelines from 01.01.2019 onwards. It is also evident from the letter issued by the petitioner's banker dated 21.02.2020, stating that the cheques were issued to the petitioner herein on 06.06.2008. Now, after a period of 11 years the cheques were presented for collection and both the cheques were returned dishonored and directed the respondent to contact Drawer/Drawee Bank.

8. In this regard the learned counsel appearing for the petitioner relied upon the order of this Court in Crl.O.P.No.10406 of 2019 dated 24.07.2019 in the case of Sathiyamurthi Vs. Kesava Narayanan and relevant paragraphs are extracted hereunder:-

> "5. The only ground that has been raised by the learned counsel for the petitioner is that, the cheque has been returned by the bank by requesting the respondent to contact the Drawer - Drawee Bank and present it again. The respondent without complying with the requisite has proceeded to file the complaint for an offence under Section 138 of the Negotiable Instrument Act. It is true that the Hon'ble Supreme Court of India has held that, for whatever reasons a cheque is returned, a complaint can be maintained under Section 138 of the Negotiable Instruments Act and if such a purposeful interpretation is not given to the provision, it will defeat the beneficial legislation which wants to penalize the persons who fail to honour a cheque, after issuing the same.
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> 6. However, in the facts of the present case, the concerned bank has not returned the cheque on the ground of defect. It has been returned by directing the respondent to contact a concerned bank and present it again. In short, this endorsement cannot be held to be dishonour of cheque. In the considered view of this Court, the respondent without complying with the requirements of the bank, ought not to have proceeded to file a complaint under Section 138 of the Negotiable Instruments Act. The Court below went wrong in taking cognizance of the complaint."

The offence under Section 138 of the Negotiable Instruments Act is attracted for whatever reason the cheques are returned. In the case on hand, other circumstances are proved that the impugned cheques were issued by the petitioner for security purpose while borrowing the loan, in the year 2008. Therefore, the impugned complaint is nothing but clear abuse of process of Court and it cannot be sustained as against the petitioner.

9. In view of the above discussion, the Criminal Original Petition stands allowed and the proceedings in S.T.C.No.1535 of 2019 pending on the file of the Judicial Magistrate No.II, Puducherry, is hereby quashed. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rts
To

1.The Judicial Magistrate No.II,
Puducherry.

2.The Chief Judicial Magistrate,
Puducherry.

Crl.O.P.No.4573 of 2020 and
Crl.M.P.Nos.2613 & 2615 of 2020

GJ(CO)
RMP(06/11/2020)