

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 04.03.2020
CORAM:
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN
Crl.O.P.No.5084 of 2020 and
Crl.MP.Nos.2897 & 2898 of 2020

R.Kasim

... Petitioner

Vs.

M.Balachandar
Respondent

...

PRAYER:

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in CC.No.149 of 2019 on the file of Fast Track Magisterial level, Ambattur and quash the same.

For Petitioner : Mr.G.Murugendran

O R D E R

This Criminal Original Petition has been filed to quash the proceedings initiated under Section 138 of Negotiable Instruments Act in CC.No.149 of 2019 on the file of Fast Track Magisterial level, Ambattur.

2. The learned counsel for the petitioner submitted that the respondent initiated proceedings under Section 138 of NI Act as against the petitioner alleging that the defacto complainant approached the second accused for getting a franchise from the first accused Company. Since the second accused agreed to give the first accused franchise at Thirumullaivoyal, the complainant had invested a huge sum of Rs.5,00,000/- as per the demand of the second accused. The second accused had received a sum of Rs.5,00,000/- from the defacto complainant by way of cheque No.796446 dated 29.06.2018. After receipt of the said sum, the business was closed. Therefore, the complainant approached the second accused and requested to refund the said amount, for which the second accused had refunded a sum of Rs.4,82,500/-, by way of two cheques, one for Rs.2,41,250/- cheque No.030865 dated 08.11.2018 and another for Rs.2,41,250/- cheque No.030866 dated 11.12.2018 drawn on Bank of India, Arumbakkam Branch, Chennai. Both cheques were presented for collection, which were returned for the reason 'funds insufficient'. Therefore, notice was issued under Section 138 of NI Act and lodged a complaint.

3. The learned counsel for the petitioner further submitted that the statutory notice is not a notice in compliance of mandatory under Section 138 proviso (b) of NI Act. Even according to the complainant, the statutory notice dated 07.02.2019 does not call upon the petitioner to pay the cheque amount and it demands only R.Kasim and it is not the petitioner's name and as such notice has vitiated the entire proceedings and no cause of action to lodge the complaint. Further submitted that the other Directors of the Company, namely Namma Unavagam Pvt. Ltd. Company were not implicated as accused and no notice was served to the Company. Therefore, the complaint itself is not maintainable and liable to be dismissed. Further, even according to the complainant, the amount has not been received by the respondent and as such the respondent is not a holder under Section (8) of the NI Act, which would not include a person who though in possession of the instrument, had no right to recover the amount.

4. On perusal of the complaint, it shows that when the defacto complainant approached the second accused for taking a franchise from the first accused Company, the complainant had invested a sum of Rs.5,00,000/-. Thereafter due to inaction on the side of the said accused, the said business has been closed. When the defacto complainant asked for refund of amount, the second accused issued two cheques for a sum of Rs.4,82,500/-. Both were deposited and returned for the reason 'funds insufficient'. Further, the points raised by the petitioner are related to mixed question of fact and cannot be considered here under Section 482 Cr.P.C, and all the points raised by the petitioner can be considered only during trial. Therefore, this petition is devoid of merits, and the same is liable to be dismissed. However, the trial court is directed to complete the trial in CC.No.149 of 2019 within a period of six months from the date of receipt of copy of this order.

5. With the above direction, this criminal original petition is dismissed. Consequently, connected miscellaneous petitions are closed.

lok

WEB COPY

Sd/-

Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

To

The Judge, Fast Track Court,
Magisterial level, Ambattur.

+1cc to Mr.G.Murugendran, Advocate SR.No.19074

Cr1.O.P.No.5084 of 2020

(CO)
mst (29/05/2020)



WEB COPY