

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.12940 of 2012

and

M.P.No.1 of 2014 & Crl.M.P.No.3918 of 2017

T.Gunasekaran,
S/o.P.Thangavelu

... Petitioner

Versus

M.Muruganandam,
S/o.Mayilsamy

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to Criminal Complaint in C.C.No.304 of 2011 on the file of the Court of Judicial Magistrate No.I, Udumalpet and to quash the same.

For Petitioner : Mr.R.Nandhakumar

For Respondent : Mr.Charu Prakash
for Mr.G.Mohandoss

O R D E R

The petitioner who is an accused in C.C.No.304 of 2014 on the file of the Judicial Magistrate No.I, Udumalpet, has filed this quash petition.

2. The gist of the case is that the respondent/defacto complainant was doing business under the petitioner. The respondent herein has borrowed a sum of Rs.90,000/- as hand loan from the petitioner and promised to repay within a month. The respondent issued a cheque bearing No.30915 dated 16.12.2010 in discharge of his liability. On 20.12.2010, when the cheque was presented to the Bank for encashment, the same was returned due to insufficient fund. Therefore, the petitioner issued a demand notice dated 13.01.2011 to the respondent and requested to repay the same. The respondent sent a reply notice dated 24.01.2011 making false allegations. Following the reply notice the respondent filed a private complaint against the petitioner in C.C.No.304 of 2011, on the file of the Judicial Magistrate No.I, Udumalpet, on the ground that dues between the petitioner and respondent were settled in the year 1998 itself and thereafter

there was no business between them, subsequently Hari Maruthy Agency which is a partnership firm was closed the petitioner misused the cheque. The respondent had no liability to repay the amount. The petitioner instituted criminal proceedings against the respondent under Section 138 of the Negotiable Instruments Act in C.C.No.137 of 2011 on the file of the Judicial Magistrate No.I, Udumalpet. The petitioner completed his evidence and advance his argument and filed written statement in that case. Now the case is posted for reply if any for the respondent.

3. The contention of the learned counsel for the petitioner is that the averments in the complaint of the respondent is that the cheque was given in the year 1998 the liability has been discharged. The petitioner instead of returning back the cheque had misused the same and presented the same for encashment. The respondent ought to have handed over the cheque to the petitioner. Instead misused the same and to lodged a false complaint under Section 138 of the Negotiable Instruments Act in C.C.No.137 of 2011 before the same Court. The Trial Court before initiating the proceedings ought to have verified these facts, without following the procedure had manually entertained the complaint under Section 420 and 468 of I.P.C against the petitioner. In view of the same, the Trial Court was aware of the private complaint under Section 138 of Negotiable Instruments Act pending between the petitioner and the respondent in C.C.No.137 of 2011 and hence the Trial Court ought not to have taken the complaint filed by the respondent on the file.

4. The learned counsel for the respondent submitted that the petitioner misused the cheque issued in the year 1998 during a business transaction. The respondent cleared all his dues to the petitioner. The cheque was handed over to the petitioner as security purpose. After settling the entire dues to the petitioner, the respondent requested return of the cheque, the petitioner informed that the cheque was misplaced. The partnership firm namely Hari Maruthi Agency was closed in the year 1999, therefore the petitioner has no reason to give a cheque dated 2010. He further submitted that the petitioner misusing cheque and without any authority he had filed up cheque and deposited the cheque which would amount to forgery and cheating. The respondent sent a legal notice to the Branch Manager, Tamil Nadu Mercantile Bank, seeking clarification. The Trail Court on considering the material produced and statement made by the respondent had taken the case on file and issued summons. The petitioner's contention is to be decided during the Trail Court and not in the quash petition. He further submitted that both the C.C.No.137 of 2011 and C.C.No.304 of 2011, are pending before Judicial Magistrate No.I, udumalpet to be tried together for better appreciation and to take a holistic view.

5. Considering the rival submissions it is seen that admittedly there was business transactions between the petitioner and the respondent. It is also admitted by the respondent that during the business transaction a signed cheque was handed over to the petitioner. The contention of the respondent is that the liability has been discharged and the petitioner filled up date without any authentication and presented the cheque and projected as if the cheque was dishoured for insufficient of fund and filed complaint under Section 138 of NI Act. As per Section 138 of NI Act, presumption is in favour of the petitioner. Further, the respondent admits that he has handed over signed cheque to the petitioner. As per Section 20 of the NI Act, once the person signs and delivers the cheque he thereby gives prima facie authority to holder thereof to make or complete the negotiable instrument. Therefore, the complaint of the respondent on the ground of forgery and cheating are unsustainable. The complaint in C.C.No.304 of 2011 is a counter blast and a defence setup for the proceedings by the respondent in C.C.No.137 of 2011. On going through facts and circumstances of the case, this Court finds that the complaint filed by the respondent is nothing but an abuse of process of law. In view of the same, the complaint in C.c.No.304 of 2011 is hereby quashed.

6. Accordingly, the present Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

- 1.The Judicial Magistrate No.I,
Udumalpet.
 - 2.-do- Thro The chief Judicial Magistrate, Thiruppur.
 - 3.The Public Prosecutor,
High Court, Madras.
- +1cc to Mr.G.Mohan Doss, Advocate, sr no.29875

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RSV (CO)

RMP (21/10/2020)