IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.08.2020
Pronounced on : 04.09.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.22250 of 2017
and Crl.MP.Nos.13061 & 13062 of 2017

R.Mumtaj ... Petitioner

Versus

N.Sugumaran Nair,
S/o.Narayanan Nair,
Rep by its Special Power of Attorney
Mr.Venakatesan. ... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.2865 of 2016 on the file of the Metropolitan Magistrate, Fast Track Court-II, Egmore, Chennai against the petitioner/accused and quash the same.

For Petitioner : Mr.G.V.Sridhar

For respondent : Mr.K.Harikrishnan

O R D E R

The petitioner/accused in C.C.No.2865 of 2016 which is pending for trial on the file the Metropolitan Magistrate, Fast Track Court-II, Egmore, Chennai has filed this quash petition.

2. The respondent had filed a private complaint against the petitioner, for the offence under Section 138 of Negotiable Instruments Act r/w Section 200 of Cr.P.C pending on the file of the XVII Metropolitan Magistrate Court, Saidapet, subsequently, it was transferred to the file of Metropolitan Magistrate, Fast Track Court-II, Egmore.

3. The case of the respondent is that the respondent and the petitioner/accused had business relationship. On 07.01.2010, the petitioner obtained a loan for a sum of Rs.25,00,000/- for developing her business and assured to repay the loan amount whenever asked for. The complainant was requested the petitioner to return the money from the year 2011, but the

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petitioner never turned up to settle the money and started evading. Therefore, on 14.12.2012, the complainant lodged a complaint before the Ashok Nagar Police Station and after enquiry the petitioner had come forward to settle the amount and discharge the liability, for which, the petitioner issued a cheque bearing No.087816 dated 07.07.2014 for a sum of Rs.25,00,000/- drawn on IDBI Bank, Ashok Nagar. On 11.07.2014, when the cheque was presented in the Bank the same was dishonoured for the reason "Account Closed". Thereafter the complainant issued the legal notice and the same was returned with an endorsement "intimation delivered". Therefore, following the statutory provision the above complaint was lodged.

4. The contention of the petitioner is that the petitioner is totally a stranger to the respondent/Complainant. The petitioner is running a Wood World Furniture Shop at Ashok Nagar Main Road, Kodambakam, Chennai from the year 2006. In the course of business, the petitioner whenever visit her native for some other reason she used to give blank cheque to her husband for the purpose of the business. The blank cheques bearing No.087807 to 087825 were handed over to her husband D.Riaz. On 13.09.2011, Riaz misplaced the cheque and immediately lodged a complaint to the Inspector of Police, R10 Police Station, MGR Nagar. On 24.09.2011, the Inspector of Police gave a Non-traceable Certificate and the petitioner immediately closed her account in IDBI Bank. The petitioner produced copy of the complaint dated 03.09.2011, given to the Police and letter given on IDBI Bank dated 13.09.2011 about mis-placement of the cheques and surrendering the balance cheques and closing the account.

5. He would further submit that it is admitted by the respondent/complainant in paragraph 3 of the complaint that the petitioner obtained hand loan in the year 2011 and complaint was given by him before the Ashok Nagar Police Station in the year 2012 and after enquiry, a cheque of the year 2014 was issued, which are all highly artificial. Paragraph 3 of the complaint given by the respondent in extracted hereunder:

> "The complainant submits that the above said accused have the business and the same for the development of her business and clearing the personnel debits that the said accused had obtained the hand loan from the complainant dated 07.01.2010 sum of Rs.25,00,000/- and the same the accused had assured for the re-payment of the said loan whenever necessary of the complainant such that effect the complainant had request the money from the accused through personnel and also through phone since 2011 but the accused had never turned up for settle the amount to complainant such that the complainant had filed the complaint before the Ashok Nagar Police

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Station dated 14.12.2012 after the enquiry on the Police Station that the accused had come forward to issue a cheque bearing No.087816 dated 07.07.2014 for the sum of Rs.25,00,000/- drawn on IDIB Bank Ashok Nagar Branch to the complainant in discharge of the hand loan which was obtained by the accused."

6.The petitioner's husband misplaced the cheques and immediately informed the Police and the Bank account has been closed in the year 2011. Further, the respondent admitted that the petitioner was enquired in the Police Station. Hence the cheque was not issued in discharging of liability. It was obtained on coercion and threat the cheque had been obtained. In view of the same, no proceedings can be proceeded against the petitioner.

7. The learned counsel for the respondent/defacto complainant submitted that in this case the petitioner and the respondent were having friendly relationship, the respondent had given a hand loan, a sum of Rs,25,00,000/- in the year 2010 and despite several reminders from the year 2011, she was unable to be contacted. Later the respondent lodged a complaint on 14.12.2012 to the police, during enquiry the cheque dated 07.07.2014 was issued in the police station and thereafter when the cheque was presented for collecting the money the same was dishonoured. Hence, the respondent issued the legal notice and the same was returned with an endorsement "intimation delivered", following the statutory principal, the respondent filed a complaint against the petitioner. He would further submit that the petitioner did not deny the issuance of cheque and further, the petitioner herself admitted that she used to sign the cheque leafs and leave it with her husband D.Riaz. The contention of the petitioner is a factual one which has to be raised during the trial. Now the stand taking by the petitioner that in the year 2011, the cheque leaf was lost and Police complaint given, is for the first time. Hence prayed for quashing the petition.

8. Considering the rival submission and the materials, it is seen that on 13.09.2011, the petitioner lodged a complaint stating about misplacement of her signed cheque leaf and other documents before the Inspector of Police, R10, MGR Police Station. On 24.09.2011, the Inspector of Police had issued non traceable certificate. Thereafter, the petitioner had given a letter to the Bank for closing her account. In view of the same the contention of the respondent that the petitioner gave cheque dated 07.07.2014 in the Police Station in discharge of her liability cannot be accepted as cheque given in discharge of legal liability. Further this Court in the case of Subburam Vs. Raja Guru reported in 2007 (5) CTC 251 held that the cheque

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obtained in the Police Station cannot be accepted as to be issued in discharging of any liability. In view of the same, this Court is inclined to quash the proceeding against the petitioner.

9. Accordingly, this Criminal Original Petition is allowed and the proceedings in C.C.No.2865 of 2016 pending on the file of the Metropolitan Magistrate, Fast Track Court-II, Egmore is quashed. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

rst

To:

1.The Metropolitan Magistrate,
Fast Track Court-II, Egmore,
Chennai.

+1 CC to Mr. Harikrishnan, Advocate sr 29178.

Crl.O.P.No.22250 of 2017
and Crl.MP.Nos.13430 & 13431 of 2017

MG(CO)
SP(22/01/2021)

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