

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.No.32027 of 2019
and CrI.M.P.Nos.17560 & 17561 of 2019

Gilbert, Male, aged about 50 years,
S/o.Joseph,
No.27, II Cross Subbaiyapillai Nagar,
Ammal Chathiram,
Karaikal, Karaikal District,
Pondicherry State.Petitioner

Vs

T.Latha, Female, Aged about 45 years,
W/o.Kumar,
No.4, Teachers Street, I Cross,
Karaikal, Karaikal District,
Pondicherry State.Respondent

Prayer: Criminal Original Petition filed under Section 482
Cr.P.C. to call for the records pertaining in the S.T.R.No.488
of 2018 on the file of the Hon'ble Judicial Magistrate-II,
Karaikal quash the same.

For Petitioner : Mr.R.Murugabharathi
For Respondent : No appearance

ORDER

This Criminal original petition has been filed to quash the proceedings initiated for the offence punishable under Section 138 of Negotiable Instrument Act, in S.T.R.No.488 of 2018 on the file of the learned Judicial Magistrate-II, Karaikal.

2. The learned counsel for the petitioner submitted that the respondent lodged a complaint for the offence punishable under section 138 and 142 of the Negotiable Instrument Act in

S.T.R.No,488 of 2018 alleging that the respondent filed, she was a Power agent of her principal Mr.Shrine Banu wife of Ameer Akbar vide the Power of Attorney dated 24.04.2017 in respect of the property at admeasuring 2948 Sq.Ft comprised in Ward G, 78, 77 (part) situated at No.27 Kizhaveli Village, Karaikal. The respondent entered into a sale agreement on the strength of Power of Attorney that the wife of the petitioner herein for the above said property for the total sale consideration of Rs.17.5 lakhs and received a sum of Rs.10.00 lakhs as an advance. On the date of agreement for sale, the respondent handed over total document in respect of the above said property. The time of execution of sale deed was fixed within three months from the date of sale agreement i.e., 02.05.2017. On the same day the wife of the petitioner i.e., 2nd accused also issued a cheque bearing Nos.000040 drawn on City Union Bank Karaikal and also bearing cheque No.000775 drawn on City Union Bank Karaikal as security and agreed to return the same on the date of execution of sale deed after receipt of the balance sale consideration. While being so the principal of the respondent herein revoked her Power of Attorney on 09.05.2017. Thereafter, she also filed suit for injunction in O.S.No.241 of 2017 as against the petitioner and the respondent before the Principal District Munsif Court, Karaikal and it is pending.

3. In respect of the very same property and it is pending for trial and infact after receipt of the notice in the suit, the petitioner filed detailed counter in the injunction application. In the meanwhile, the petitioner stopped the payment of above mentioned cheques and the same was duly intimated to his bankers.

4. Subsequently, the petitioner came to understand that the respondent had cheated her principal to the tune of Rs.5.00 lakhs and as such her principal revoked Power of Attorney executed in her favour even as early as 09.05.2017 itself. Therefore, there is absolutely no legally enforceable debts to the respondent by the petitioner. The petitioner rightly stopped the payment on the cheques issued on the date of agreement.

5. He further submitted that insofar as this petitioner is concerned except the relation of the house of the 2nd accused, who has issued a cheque and entered into an agreement of sale. The petitioner is nothing to do with the alleged offence punishable under Section 138 of the Negotiable Instruments Act as alleged by the respondent herein. Thereafter, even other respondent presented the cheque for collection and the same was

returned for the reason payment stopped by the drawer. Thereafter, the respondent also issued a statutory notice for which the petitioner sent a detailed reply notice. Therefore, he sought for quash the complaint..

6. No one appeared on behalf of the respondent. Heard the learned counsel appearing for the petitioner.

7. There are totally 2 accused persons in which the petitioner is arrayed as 2nd accused and the wife of the petitioner is arrayed as 1st accused. The 1st accused entered into an agreement for sale the respondent. On 02.05.2017 to purchase the property belonging to the respondent property i.e., Mr.Shrine Banu. The Said Shrine Banu executed a Power of Attorney in favour of the respondent herein in respect of the said property on 24.04.2017. On the strength of the Power of Attorney, the respondent entered into a sale agreement with the petitioner's wife i.e., 1st accused for the total sale consideration of Rs.17.5 lakhs. On the date of agreement on 02.05.2017 itself. The 1st accused pay a sum of Rs.10.00 lakhs as an advance for the total sale consideration and also the very same date. The petitioner is being husband of 2nd accused issued two cheques for the security purpose and condition that on the date of registration of sale consideration after receipt of the balance sale consideration cheques could be returned back to the petitioner.

8. Immediately, after the sale agreement on 09.05.2017, the Power of Attorney was cancelled by the Principal Mr Shrine Banu. She also filed suit for injunction in respect of the very same property in O.S.No.241 of 2017 before the Principal District Munsif Court, Karaikal as against the petitioner and the respondent herein and it is pending for trial. Thereafter immediately, the petitioner stopped the payment for the cheques issued by him in favour of the respondent herein by the proper communication to his bankers.

9. Thereafter, the respondent presented filled up the cheques issued by the petitioner for a sum of Rs.1.50 lakhs and presented for collection. It was returned for the reason that payment stopped by the drawer. The respondent issued a statutory notice and the petitioner had given a detailed reply notice dated 30.08.2017. In the reply notice the petitioner categorically stated that the cheques was issued only for the security purpose that the condition to be presented. On the date of registration for the balance sale consideration.

10. Admittedly, the Power of Attorney executed in favour of the respondent was cancelled by her principal on 09.05.2017 immediately after the sale agreement on 02.05.2017. Thereafter, the petitioner stopped the payment for the cheques issued by him. Further, it is seen that the cheques were issued on the date of agreement i.e., 02.05.2017 and condition that the cheques to be returned. After receipt of the balance sale consideration on the date of registration of sale deed. Therefore, the petitioner rightly stopped the payment immediately after came to understand that the Power of Attorney executed in favour of the respondent was cancelled by her Principal. Therefore, there is no legally enforceable debts to the respondent to attract offence punishable under Section 138 of the Negotiable Instruments Act.

11. It is seen from the suit filed by the Principal and all the respondents in O.S.No.241 of 2017 on the file of the Principal District Judge, Karaikal for injunction in respect of the very same property and was intended to purchased by the wife of the petitioner herein. Therefore, the entire proceedings initiated by the respondents for the offence punishable under Section 138 of the Negotiable Instruments Act, is nothing but clear abuse of process of Court and it cannot be sustained.

12. In view of the above discussion, this Criminal Original Petition is allowed and the proceeding in S.T.R, No.488 of 2018 on the file of the learned Judicial Magistrate-II, Karaikal, is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)MDU

//True Copy//

Sub Assistant Registrar

msrm

To

1. The Judicial Magistrate-II,
Karaikal.

2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Murugabharathi, Advocate, S.R.No.19152

Crl.O.P.No.32027 of 2019
and Crl.M.P.Nos.17560 & 17561 of 2019

BR(CO)
KKV/04/09/2020