



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.02.2020

CORAM:

THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

Crl.O.P. (MD)No.2668 of 2015

and

M.P. (MD)No.1 of 2015

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J.Selvarani

... Petitioner / 1st Accused

Vs.

1.The Executive Officer,
Arulmigu Koppudaiyamman Thirukoil,
Karaikudi,
Sivagangai District.

... Respondent / Complainant

2.K.Chandrasekaran

... Respondent / 2nd Accused

PRAYER: Petition is filed under Section 482 of Criminal Procedure Code, praying to call for the records relating to C.C.No.82 of 2013, pending on the file of the Judicial Magistrate Fast Track Court, Karaikudi, Sivagangai District and to quash the said proceedings as against the petitioner herein.

For Petitioner : Mr.S.Kanagarajan

For Respondent-1 : Mr.AL.Kannan

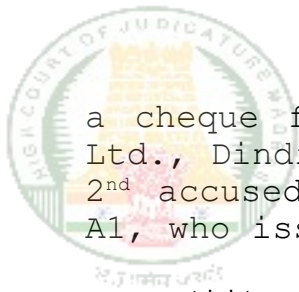
For Respondent-2 : Party in Person

O R D E R

This Criminal Original Petition has been filed by the petitioner / A1, seeking to quash the proceedings in C.C.No.82 of 2013, pending on the file of the learned Judicial Magistrate, Fast Track Court, Karaikudi, Sivagangai District.

2. The gist of the case is as follows:-

(i) The complainant is the Executive Officer of 'Arulmigu Koppudaiyamman Thirukoil', Karaikudi, Sivagangai District, who filed a private complaint, against the petitioner and one K.Chandrasekaran/A2, for the offence under Section 138 of Negotiable Instruments Act and Section 420 of IPC. The Temple had leased out the right of weekly shandi in its property in T.S.No.127/1, for three years Fasli years 1412, 1413 and 1414. The petitioner had taken the lease right for Rs.11,90,250/-. The part amount for the lease was paid and for the balance of Rs.7,72,250/-,



a cheque for Rs.6,50,000/-, dated 29.06.2005, drawn on ICICI Bank Ltd., Dindigul, bearing No.104323, was given by the petitioner. The 2nd accused viz, Chandrasekaran is the brother of the petitioner / A1, who issued the cheque for the liability of his sister A1.

(ii) When the cheque was presented in the Complainant's Bank namely, Canara Bank, Karaikudi, the cheque was not honoured and returned stating for the reason, 'insufficient funds', which was intimated by Bank Memo, on 09.07.2005. Thereafter, statutory notice was issued on 02.08.2005, which was received by the petitioner/A1 on 08.08.2005 and the 2nd accused on 09.08.2005, neither payment was made nor reply was sent. The petitioner with clear intention to deceive payment had submitted the cheque of her brother 2nd accused to discharge her liability. Hence, the above case came to be registered.

3. The contention of the petitioner is that there is no legally enforceable debt or liability, as per the complaint and the complaint does not disclose the essential ingredients of the offence and the cheque was not issued by the petitioner. The petitioner is not necessary party to the proceedings, hence, sought for quashment of the complaint.

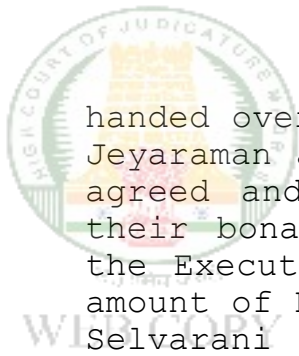
4. The respondent / complainant submitted that the petitioner and her brother were running the Shandi and it is admitted that the liability of the temple has not been discharged, for discharge of the liability, the cheque had been issued. The contentions of the petitioner are factual one, which has to be decided only during trial.

5. I have heard the learned counsel appearing on either side and perused the materials available on record.

6. The admitted case is that the petitioner is liable to pay to the temple, the cheque of the petitioner's brother was submitted by her in discharge of the said liability, it was returned by the Complainant's Bank, as 'insufficient funds', when it was presented. Hence, they have committed the above offence.

7. During the proceedings, the petitioner's husband Jeyaraman appeared before this Court and submitted a letter stating that some payments made to the erstwhile Executive Officer namely, one Kannaiah, was not given credit.

8. On perusal of the records, it is seen that there is an admitted liability of Rs.7,72,250/- and the cheque issued is for Rs.6,50,000/-, which is in discharge of part liability. The 2nd accused Chandrasekaran appeared in person and submitted that he was successful tenderer for subsequent Fasli and he had been making payments regularly, admitted that his sister is liable to settle her liability to the temple and in discharge of the same, the cheque has



handed over. Thereafter, during Mediation, the petitioner's husband Jeyaraman as well as her brother Chandrasekaran appeared and it was agreed and the issue was resolved with an undertaking. To show their bonafide, a Demand Draft for Rs.75,000/- was handed over to the Executive Officer, on 08.02.2020. Thereafter, for the balance amount of Rs.7,00,000/-, on 28.02.2020, the said Chandrasekaran and Selvarani agreed to make payment of Rs.7,00,000/-. The petitioner submitted that the petitioner is now under financial constraints, she is unable to make payments in one stroke, hence, sought for payment in installments that is Rs.1,00,000/- per month, starting from March, 2020. The petitioner has given cheques, for the balance amount of Rs.7,00,000/-and the details of the cheques are as follows:-

S.No	Cheque No.	Amount	Date
1	000001	Rs.1,00,000	15.03.2020
2	000002	Rs.1,00,000	16.04.2020
3	000003	Rs.1,00,000	17.05.2020
4	000004	Rs.1,00,000	18.06.2020
5	000005	Rs.1,00,000	19.07.2020
6	000006	Rs.1,00,000	20.08.2020
7	000007	Rs.1,00,000	21.09.2020

9. Today, the above cheques were handed over by Chandrasekaran, on behalf of his sister, before this Court. The petitioner Selvarani has filed an affidavit in conformity to the above undertaking, in which, in paragraphs 3 to 5 it has been stated as follows:-

"3. I respectfully submit that I was a Weekly Market Contractor before the defacto complainant, the Executive Officer, Arulmigu Koppudaiyamman Thirukoil, Karaikudi for Fasli 1412, 1413, 1414, for about 3 years. I was the main bidder for that Fasli, the bid amount is Rs.11,90,250/- towards the above tender amount, I have been paid the part amount and yet to be paid the rest of the amount of Rs.7,72,250/-

4. I respectfully submit that upon hearing before this Hon'ble Court on 07.02.2020, I undertake to the settle amount of Rs.7,72,250/- within 7 equal installments. Accordingly, I have been paid through Demand Draft for Rs.75,000/- to the defacto complainant on through this Hon'ble Court.



5. I further submit that on 13.02.2020, I appeared before this Hon'ble Court, I undertake to settle the rest of the amount of Rs.6,97,250/- with 7 months time."

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10. Thus, the sum and substance is that petitioner admits her liability and in admission to the liability, she issued the above seven cheques. The petitioner's brother K.Chandrasekaran and her husband Jeyaraman confirm the liability and resolvment of the issues.

11. At this juncture, the learned counsel for the respondent Temple submitted that there is difference in the script and ink in the name of the drawyee and the amount mentioned in the cheque, which latter may be taken as a defence, in case of any proceedings initiated for not honouring the above cheques.

12. This apprehension of the respondent Temple is misconceived. The petitioner as well as her brother Chandrasekaran had filed an affidavit and given an undertaking before this Court that they will honour the cheques and will not dispute the cheques or its liability, in any manner, on any ground.

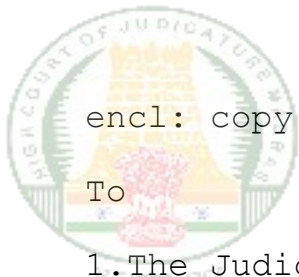
13. Considering the submissions made by the learned counsel appearing on either side and taking into consideration the affidavit filed by the petitioner along with his brother Chandrasekaran, this Court is inclined to quash all further proceedings in C.C.No.82 of 2013, pending on the file of the learned Judicial Magistrate, Fast Track Court, Karaikudi, Sivagangai District, against the petitioner and the 2nd respondent. The affidavit filed by the petitioner, dated 27.02.2020, shall form part of the order.

14. The counsel for the respondent submitted that he may be given liberty to proceed against the erstwhile Executive Officer / Kannaiah, for not giving credit of Rs.1,80,000/-, received by him from Jeyaraman, for the Fasli 1413. It is for the said Jeyaraman to proceed against Kannaiah, on his individual capacity, since in the letter, no way it is stated that it has been issued for on or behalf of the temple. Consequently, the connected miscellaneous petition is closed.

Sd/-
ASSISTANT REGISTRAR(CRL.SIDE)

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/ /2020
SUB ASSISTANT REGISTRAR(CS)



encl: copy of the affidavit

To

- 1.The Judicial Magistrate
Fast Track Court,
Karaikudi,
Sivagangai District
- 2.The Executive Officer,
Arulmigu Koppudaiyamman Thirukoil,
Karaikudi,
Sivagangai District.
- 3.The Addl.Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The section officer
Criminal Section(Record)
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.KANAGARAJ, Advocate (SR-9710[F] dated 03/03/2020

Crl.O.P.(MD)No.2668 of 2015
28.02.2020

KB(17.03.2020)/5P/6C