



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.10.2020

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.(MD)No.20972 of 2016

and

Crl.M.P.(MD)Nos.10677 & 10678 of 2016

P.Sabeer Ahamed Sayeed

... Petitioner/Accused

Vs

S.Charles

... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records relating to the impugned complaint in CC.No.350 of 2016 on the file of the Judicial Magistrate No.II, Tiruchirappalli and quash the same.

For Petitioner : Mr.R.S.Sivaram

For Respondent : Mr.J.M.Hassanul Bazari for
M/s.S.A.Ajmal Khan

ORDER

This petition has been filed to quash the impugned complaint in CC.No.350 of 2016 on the file of the Judicial Magistrate No.II, Tiruchirappalli.

2. It is avert that the petitioner is an accused in the complaint lodged by the respondent for the offence under Section 138 of Negotiable Instruments Act. Even according to the petitioner, the alleged cheque was returned for the reason 'present in proper zone'. Without complying the said direction issued by the banker, the respondent issued statutory notice and proceeded with the impugned complaint for the offence under Section 138 of Negotiable Instruments Act. It is further averred that the impugned cheque was not returned for the reason of 'in sufficient fund' or 'account closed' or 'the payment stop'. As such, there is no dishonour of cheque so as to attract offence under Section 138 of Negotiable Instruments Act.



3. The learned counsel for the respondent would submit that the cheque was returned for the reason 'present in proper zone'. After receipt of the statutory notice issued by the respondent herein, the petitioner neither gave reply nor made any payment demanded by the respondent herein. Therefore, it proved that the petitioner to cheat the respondent herein issued the cheque for the illegal enforcible debt. He further submitted that the points raised by the petitioner are mistake of question of fact and it cannot be considered by this Court under Section 482 of Cr.P.C. Therefore, he sought for dismissal of this quash petition.

4. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

5. The petitioner is sole accused in the complaint lodged by the respondent for the offence under Section 138 of Negotiable Instruments Act. According to the respondent, the petitioner borrowed a sum of Rs.6,00,000/- from the respondent on 23.09.2013 and promised to repay the said amount. In order to repay the said amount, the petitioner issued a cheque for a sum of Rs.5,00,000/- drawn on ICICI Bank Limited, Indra Nagar Branch, Bengalore. The said cheque was presented for collection on 24.03.2016 and the same was returned for the reason 'present in proper zone'. After issuance of statutory notice dated 20.04.2016, the respondent filed a complaint for the offence under Section 138 of Negotiable Instruments Act. It is seen that the alleged cheque was presented to the respondent's banker viz., KVB Cantonment, Trichy, on 24.03.2016. The said cheque was returned for the reason of "present in proper zone". Now, the only point for consideration is that whether the reason for return of a cheque would amount to punishable for the offence under Section 138 of Negotiable Instruments Act or not. In this regard, it is relevant to extract the provisions under Section 138 of Negotiable Instruments Act. Accordingly, when the cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of that amount is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence.

6. In the case an hand, admittedly, the alleged cheque was deposited with his banker viz., KVB Cantonment, Trichy. Thereafter, it was returned for the reason 'present in proper zone'. On receipt of the returned memo from his banker, the respondent failed to represent the cheque with the proper zone. Instead of depositing the said cheque, the respondent issued notice to the petitioner to initiate proceedings for the offence under Section 138 of Negotiable Instruments Act.

7. Therefore, the reason for returning of the alleged cheque to offence under Section 138 of Negotiable



Instruments Act. Therefore, the present complaint is nothing, but, clear abuse of process of law.

8. In view of the above discussion, the impugned complaint in CC.No.350 of 2016 on the file of the Judicial Magistrate No.II, Tiruchirappalli, is hereby quashed as against the petitioner herein. Accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

9. However, the respondent is always at liberty to recover if any due from the petitioner in the manner known to law.

Sd/-

Assistant Registrar (Crl.Side)

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Sub Assistant Registrar(CS)

To

- 1.The Judicial Magistrate No.II,
Tiruchirappalli.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD)No.20972 of 2016
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