BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:14.10.2020
CORAM
THE HONOURABLE Mr.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.(MD).No.22038 of 2016
and
Crl.M.P.(MD).Nos.11378 and 11379 of 2016

B.Selvam ... Petitioner

Vs.

P.Krishnamoorthy ... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the entire records pertaining to S.T.C.No.684 of 2013 on the file of the Judicial Magistrate No.IV, Trichy and quash the same.

For Petitioner : Mr.Veera Kathiravan
Senior Counsel
M/s. Veera Associates
For Respondent : Mr.M.C.Swamy

ORDER

This petition has been filed to quash the proceedings in S.T.C.No.684 of 2013, on the file of the Judicial Magistrate No.IV, Trichy, as against the petitioner.

2.The learned counsel appearing for the petitioner submitted that the petitioner is the sole accused and on the complaint lodged by the respondent herein, a private complaint has been filed under Section 200 Cr.P.C., for the offence punishable under Section 138 of Negotiable Instruments Act. The respondent has already filed a complaint as against the wife of the petitioner herein in S.T.C.No.204 of 2008, wherein, the wife of the petitioner has established her case that there is no such transaction resulting in initiation of proceedings and by tampering records, the complaint was given by the respondent and the trial Court has acquitted the wife of the petitioner. Aggrieved by the same, the respondent has filed an appeal before this Court and the same was dismissed with costs and also ordered to proceed against the respondent under Section 340 of Cr.P.C. He further submitted that the said complaint filed by the respondent as against the wife of the petitioner herein is in the year 2008. According to the respondent herein, on 14.04.2010, the petitioner has borrowed a sum of Rs.16,00,000/- for family needs and agreed to pay interest at the rate of 24% per annum and executed a promissory note on the same day. The learned counsel appearing for the petitioner submitted that in order to repay the amount with interest, the petitioner has issued a cheque on 03.03.2013, but when said cheque was presented for encashment, the same was returned on 14.03.2013 with an endorsement "Account Closed". Thereafter, on 01.04.2013 the respondent has issued statutory notice to the petitioner, for which, the petitioner has issued a reply notice to the respondent on 15.04.2013. He further submitted that absolutely there is no legally enforceable debt by the petitioner herein. Hence, he prayed to quash the proceedings.

3.The learned counsel appearing for the respondent submitted that on 14.04.2010, the petitioner has borrowed a sum of Rs.16,00,000/- from the respondent and admitted to repay the said amount with interest at the rate of 24% per annum. In order to repay the said amount with interest, the petitioner has issued a cheque for a sum of Rs.27,00,000/- and the said cheque was presented for collection on 03.03.2013 and the same was returned on 14.03.2013, with an endorsement "Account Closed". Immediately, the respondent has sent a legal notice through his counsel on 01.04.2013 and lodged a complaint. He further submitted that the grounds raised by the petitioner, cannot be considered under Section 138 of Negotiable Instruments Act and hence, he prayed 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 the sole accused and the complaint lodged by the respondent herein is for the offence under Section 138 of NI Act. The case of the respondent is that the petitioner has borrowed a sum of Rs.16,00,000/- and agreed to repay the principal amount with interest at the rate of 24% per annum. In order to repay the said amount, the petitioner has issued a cheque for a sum of Rs.27,00,000/- and the same was presented for collection and the same was returned with an endorsement "Account Closed", and as such, the respondent had lodged a complaint.

6.On a perusal of the materials available on records, it is seen that the petitioner has borrowed a sum of Rs.16,00,000/- from the respondent on 14.04.2010, whereas, the respondent has already filed a complaint for the offence under Section 138 of Negotiable Instruments Act as against the wife of the petitioner herein alleging that she has borrowed a sum of Rs.6,00,000/- for her family expenses and promised to repay the said amount with interest and executed a promissory note for the debt in favour of the respondent on the same day. In order to repay the said amount, she has issued a cheque and the same was presented for collection and the same was returned with an endorsement "Account Closed". The said complaint was lodged in the year 2008 in S.T.C.No.204 of 2008. The trial Court found that the signature in the promissory note is not that of signature of the wife of the petitioner and disproved the case of the complainant by creating reasonable doubt. Further, the trial Court hold that the respondent has not advanced any amount as alleged in the complaint and acquitted the wife of the petitioner. Aggrieved by the same, the respondent preferred an appeal before this Court in Crl.A.(MD).No.103 of 2015. This Court by order, dated 21.04.2015 held as follows:

> *"12.Having come to the said conclusion that the promissory note (Ex.P.1) is a forged document, this Court cannot close its eyes and keep its arms tied without proceeding further, when it has been brought to the notice of this Court that the said false document has been used in evidence, Section 195 of the Indian Penal Code is the penal Provision to punish a person for having given or fabricating false evidence with an intention to procure conviction of offence punishable with imprisonment for life or imprisonment. Here in this case, only with a view to secure conviction for the respondent, the appellant/complainant had created Ex.P.1-Promissory note by committing forgery and with the knowledge that it is a forged document, he has used the same as evidence before the lower Court as well as before this Court. This is not my final conclusion and it is only a prima facie opinion. Having come to the said prima facie opinion that the appellant is liable to be prosecuted for offence under Section 195 IPC, it is necessary for this Court to hold further enquiry by affording an opportunity to the appellant under Section 340 of the Code of Criminal Procedure.*
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> *13.As directed, the appellant is before this Court today. When questioned, the appellant submitted that he is a retired Government Official and now he is aged 71 years. He has undergone heart by-pass surgery and his health is bad shape. He apologized to this Court for the above acts and further submitted that this Court may not initiate proceedings under Section 340 Cr.P.C., to hold enquiry. The appellant has further submitted that he would pay a cost of Rs.2,500/- for having wasted the time of this Court a well as that of the Magistrate. The said submission is also recorded."*

7.This Court has also imposed a cost of Rs.2,500/- on the respondent herein, while dismissing the said appeal. In fact, the respondent has sent a legal notice to the petitioner on 01.04.2013, after receiving the notice, the petitioner has sent a replay notice, on 15.04.2013, in which, the petitioner had categorically denied the allegations and stated that when the petitioner has borrowed a sum of Rs.5,00,000/- in the year 2003 and at that time, the respondent has received four empty cheques as security, further two more cheques were received from the wife of the petitioner and he has also received signature in the empty papers. The entire amount has been settled to the respondent and to return those cheques and blank signed papers for the reason that he was suffered from heart illness. Further stated that the petitioner and his wife have never borrowed any amount as alleged by the respondent herein on 01.07.2005 and 14.04.2010. After receipt of the reply notice, the respondent did not receive any rejoinder, but, he has filed a complaint with the same allegations. Therefore, no amount has been lent by the respondent on 14.04.2010. In fact, in the notice dated 01.04.2013 the respondent had stated that the petitioner has borrowed a sum of Rs.16,00,000/-, whereas, in the complaint, the respondent stated that the petitioner has borrowed a sum of Rs.11,00,000/-. Therefore, entire cheques and blank papers, which were received as security have been misplaced by the respondent and the proceedings is an abuse of process of law and hence, the petition is liable to be quashed.

8.Accordingly, this criminal original petition stands allowed and the case in S.T.C.No.684 of 2013, on the file of the learned Judicial Magistrate No.IV, Trichy, is quashed. Consequently, the connected Criminal Miscellaneous petitions are closed.

Sd/-

Assistant Registrar (RTI)

// True Copy //

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Sub Assistant Registrar(CS)

vsg

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

The Judicial Magistrate No.IV,
Trichy.

+1 CC to M/s.VEERA ASSOCIATES, Advocate SR-20122.

Crl.O.P.(MD).No.22038 of 2016
and
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SJ(CO)
CS(27.11.2020) 5P 3C