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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2021

CORAM:

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

CrI.O.P. No.15665 of 2016
and
CrI. M.P. No.7698 of 2016

C.Premkumar

... Petitioner

Vs.

B.Chamundeeswari

... Respondent

PRAYER: Criminal Original Petition has been filed under Section 482 Cr.P.C., to call for the records in C.C.No.4965 of 2014 pending on the file of III Fast Track Court, Saidapet, Chennai and quash the 138 N.I. Act complaint pending against the petitioner.

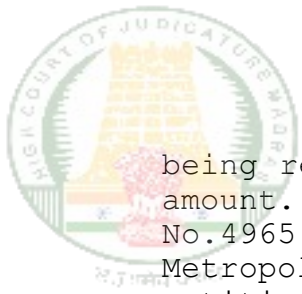
For Petitioner : Mr. S. Silambu Selvan

For Respondent : Mr. Kaushik,
(For K.N.S. Law Chamber)

O R D E R

This Criminal Original petition has been filed under Section 482 Cr.P.C. seeking for to call for the records in C.C.No.4965 of 2014 pending on the file of III Fast Track Court, Saidapet, Chennai and quash the complaint filed under Section 138 of N.I. Act pending against the petitioner.

2.The case of the petitioner is that the respondent had filed a case against the petitioner for the offence punishable under Section 138 of the Negotiable Instrument Act. The de-facto complainant was working under the 1st petitioner's company as an employee. As there was a due of salary to be paid to the defacto-complainant and for the said arrears of salary, one Saravanan, 2nd accused, had issued a Post Dated Cheque for an amount of Rs.7,28,000/- drawn on Oriental Bank of Commerce, Pondy Bazar, T.Nagar, Chennai - 600 017 and the same was presented before the State Bank of India, Balaji Nagar, Chennai, on 7.2.2014 and the said cheque was returned with remarks of "Funds insufficient" on 9.2.2014. In spite of the said cheque



being returned, the petitioner herein has not paid the aforesaid amount. Hence, the defacto-complainant filed a petition in C.C. No.4965 of 2014 under Section 138 of N.I. Act, before the XVII Metropolitan Magistrate, Saidapet, Chennai against the petitioner. In the meanwhile, the case has been transferred to the III Fast Track Court, Saidapet, Chennai. after establishment of the Fast Track Court. In view of the aforesaid complaint against the petitioner, the petitioner herein has filed the present Criminal Original Petition to call for the records in C.C. No.4965 of 2014 pending on the file of III FTC, Saidapet, Chennai and quash the same.

3. The learned counsel for the petitioner would submit that the said cheque was in the name of VT Education, wherein the case was filed against the VT Man Power Agency. Hence, the petitioner has not issued the said cheque and had no role played in the transaction with the defacto-complainant/respondent herein.

4. It has further been submitted that as per the complaint, the 2nd accused namely, Mr. Saravanan, had issued the said cheque under his individual capacity. The cheque was issued by the 2nd accused under his individual capacity, it would not cover the petitioner as the cheque in question was not issued by the petitioner herein. Further, the job confirmation letter and in the agreement of the employment, it clearly attributes that whatever the case relating to the employer and employee, it should be resolved by appointing the Arbitrator. In this case, the arbitrator was neither appointed nor any proposal has been sent to the petitioner herein. Only after notice dated 4.1.2014 sent by the petitioner, the respondent with the motive of retaliation has sent reply cum demand notice dated 7.2.2014 to wreak vengeance, claiming an amount of Rs.7,28,000/- as salary due, which was clearly replied by the petitioner that the cheque was in no manner given to the defacto-complainant/respondent herein. Further, the said Cheque would be stolen or it should be kept mischievously by her own which may be handed over to her at the time of her employment in the Company. The cheque in question is not belonged to the company and the petitioner had not issued any cheque to the de-facto complainant/respondent herein as the petitioner had not direct interaction with her.

5. The learned counsel for the respondent has submitted that in order to deprive the respondent's legitimate dues payable by the Accused, the 1st accused namely the company has chosen to issue the Legal Notice dated 04.01.2014 with false, imaginary and frivolous allegations claiming a sum of Rs.10 Lakh from the complainant. The complainant had sent a Reply Notice dated 07.02.2014 after recovery from her illness claiming her dues of Rs.7,28,000/- with interest at the rate of 24% p.a. from



03.06.2013. The 1st accused sent a letter dated 10.02.2014 stating that a detailed Re-joinder will be sent in due course. But it has not been sent by the company till date and as such the contentions against both accused stands proved. For better adjudication, the said Notice, Reply Notice and Letters have been filed along with the said Complaint.

6. It has been further submitted by the learned counsel for the respondent that within a period of 15 days from the date of the receipt of the information regarding return of the Cheque, the complainant has sent a Legal Notice dated 24.02.2014 through her counsel calling upon the accused for the payment of the said amount due on the dishonoured cheque within 15 days from the date of receipt of notice. In the event of failure of the accused to pay the said amount within the stipulated time, the de-facto complainant has filed the complaint in C.C. No.4965 of 2014 on the file of the Metropolitan Magistrate, Saidapet, Chennai and the same has been transferred to III-FTC, Saidapet after establishment of Fast Track Court.

7. Heard, the learned counsel for the petitioner and the learned counsel for the respondent as well as perused the material available on records.

8. On a perusal of the records, it is seen that the defacto complainant was working as Assistant General Manager at VT Manpower Consultancy Services Private Limited, from 14.7.2010 and her salary was Rs.35,000/- per month. The general policies, leave and permission policies, accounts policies, salary policies, amendment, agreement of employment in respect of the VT Manpower Consultancy Services Private Limited have been issued to the defacto-complainant. As per clause 19 (Arbitration) of the Agreement of Employment of VT Manpower Consultancy Services Private Limited, the parties expressly agree that all disputes or controversies arising out of this agreement, its performance, or the alleged breach thereof, if not disposed of by agreement, shall be resolved by arbitration in accordance with this section. Either party must demand such arbitration only within three (3) months after the controversy arises by sending a notice of demand to arbitrate under the Indian Arbitration and Conciliation Act, 1996, to the other party. In the disposition of the dispute, the arbitrators shall be governed by the express terms of this agreement and otherwise by the laws of the State of (specify) which shall govern the interpretation of the Agreement. The decision of the arbitrators shall be final and conclusive on the parties and shall be a bar to any suit, action or proceeding instituted in any court or before any administrative tribunal. Notwithstanding the foregoing, judgment on any award by the arbitrators may be entered in any court of competent jurisdiction. This arbitration



12. It could also be seen that there are allegations and counter allegations against each parties and as per clause 19 (Arbitration) of the Agreement of Employment of VT Manpower Consultancy Services Private Limited, the parties expressly agree that all disputes or controversies arising out of this agreement, its performance, or the alleged breach thereof, if



not disposed of by agreement, shall be resolved by arbitration in accordance with this section. Either party must demand such arbitration only within three (3) months after the controversy arises by sending a notice of demand to arbitrate under the Indian Arbitration and Conciliation Act, 1996, to the other party.

13. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in Crl.A.No.579 of 2019 dated 02.04.2019 in the case of Devendra Prasad Singh Vs. State of Bihar & Anr., as follows:-

" 12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

14. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in Crl.A.No.1572 of 2019 dated 17.10.2019 in the case of Central Bureau of Investigation Vs. Arvind Khanna, wherein, it has been held as follows:

"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during



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trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

15. Further the Hon'ble Supreme Court of India also held in the order dated 02.12.2019 in CrI.A.No.1817 of 2019 in the case of M.Jayanthi Vs. K.R.Meenakshi & anr, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioner cannot be considered by this Court under Section 482 Cr.P.C.

16. It is further seen that the cheque has been issued by one Saravanan and the defacto complainant claims that it has been issued by Mr.Saravanan, General Manager, VT Manpower



Consultancy Services Private Limited for personal liability. The issue whether the cheque has been issued by one Saravanan in his personal capacity or in the capacity of the General Manager of the firm is to be decided only at the stage of trial. This Court cannot have a roving enquiry in this matter and as per the order of the Hon'ble Supreme Court where guidelines were issued for quashing the FIR, this case would not fall under the guidelines issued and this Court is of the view that the petitioner's claim to quash the C.C. No.4965 of 2014 on the file of the III-FTC, Saidapet, Chennai, cannot be accepted and all the aspects regarding employment and other aspects have to be decided only before the trial Court.

17. In view of the above discussions, this Court is not inclined to quash the proceedings in C.C. No.4965 of 2014 on the file of the III-FTC, Saidapet, Chennai. The petitioner is at liberty to raise all the grounds before the trial Court.

18. Accordingly, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is also closed if any.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To:

The Presiding Officer,
III-FTC, Saidapet,
Chennai.

Copy to

The XVII Metropolitan Magistrate,
Saidapet, Chennai.

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and
Cr1. M.P. No.7698 of 2016

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srg 11/11/2021