IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.O.P No.1087 of 2018
and
Crl.M.P No.369 of 2018

Sajee Varghese ...Petitioner/3rd Accused

Vs.

M/s Anamika Amaravathi Trades and Investments Pvt., Ltd.,
Having Office at No.88 (74), Armenian Street,
Chennai- 600 001
Represented by its Authorised Signatory
Mr. T. Bhuvarahamurthy .. Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records in C.C.No.1456 of 2011 in regard to the Petitioner/3rd Accused on the file of the learned IV Fast Track Court, George Town.

For Petitioner : Mr.V. Mano Priya
For Respondent : Mr.B. Divakaran

ORDER

This petition has been filed challenging the proceedings initiated by the respondents against the petitioner under Section 138 of Negotiable Instruments Act.

2. The case of the respondent/defacto complainant is that the petitioner/3rd accused and the 2nd accused borrowed a sum of Rs.20,00,000/- from the defacto complainant as hand loan on 12.01.2009 for developing their business agreeing to repay the said principal together with interest at 24% per annum. Thereafter, the second and third accused committed default in payment and the respondent requested for settlement of legal dues to him. Subsequently the second and third accused issued a cheque towards the payment. The subject cheque was presented for payment on 30.12.2010 by the complainant with their Banker M/s The Federal Bank Ltd., and the subject cheque was returned unpaid and dishonoured by the Banker on 31.12.2010, which led to the registration of a complaint u/s 138 of Negotiable Instruments Act.

3. The learned counsel for the petitioner submits that the 2nd accused had played fraud and the cheated the petitioner, for which the petitioner has given a complaint on 20.05.2010 and the same was forwarded to the concerned authorities for necessary action and investigation. He further submits that the 2nd accused also closed the Bank Account in which both were Joint Account holders.

4. Per Contra the learned counsel for the first accused would submits that only the 2nd and 3rd accused approached the defacto complainant for hand loan and availed the loan amount and utilized the same for business purpose. He further submits that the 2nd and 3rd accused gave an assurance to the defacto complainant that they will re-pay the loan amount.

5. The grounds raised by the counsel for the petitioner are all factual in nature and it requires appreciation of evidence and this Court cannot decide the same in exercise of its jurisdiction under Section 482 of Criminal Procedure Code. It is left open to the petitioner to raise all the grounds before the Court and the same shall be considered on its own merits and in accordance with law. This Court is not inclined to interfere with the proceedings pending before the Court below.

6. The learned counsel for the petitioner requested this Court to dispense with the presence of the petitioner. Taking into consideration, the facts and circumstances of the case, the presence of the petitioner is dispensed except for his appearance for the purpose of receiving the copy and proceedings u/s 207 of Cr.P.C, framing of charges, questioning under Section 313 Cr.P.C and at the time of passing of the final judgement.

7. Accordingly, this Criminal Original Petition is dismissed and the Court below is directed to complete the proceedings in C.No.1456 of 2011 , within a period of three months from the date of receipt of copy of this order. Consequently, the connected miscellaneous petition is also closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

smn

To

1. The IV Fast Track Court, George Town, Chennai

CRL.O.P No.1087 of 2018
and
Crl.M.P No.369 of 2018

SKY(CO)
SP(02/08/2021)