IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2021

CORAM :

THE HONOURABLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

Crl.O.P.No.9038 of 2016 and
Crl.M.P.No.4683 of 2016

1.M/s.Shree Ambal Land Promoters (P) Ltd.,
Represented by its Directors,
No.159, Arcot Road,
Porur, Chennai – 600 116.

2.Mukesh Kumar Jain,
Director, Shree Ambal Land Promoters (P) Ltd.,
No.159, Arcod Road,
Porur, Chennai – 600 116.

3.Sivasubramaniam Sivaraja,
Director,
Shree Ambal Land Promoters (P) Ltd.,
No.159, Arcod Road,
Porur, Chennai – 600 116.

4.Sivaraja Vijaya,
Director,
Shree Ambal Land Promoters (P) Ltd.,
No.159, Arcod Road,
Porur, Chennai – 600 116. ..Petitioners / Accused No.1 to 4

Vs.

T.Amutha ... Respondent

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the entire records relating to complaint in C.C.No.4642 of 2015 on the file of the III Fast Track Court, Saidapet, Chennai and quash the same.

For Petitioners : Mr.N.Vijaya Basker
for M/s.Law Vision

For Respondent : Mr.S.Bruno Cruz

O R D E R

This Criminal Original Petition has been filed to call for the entire records relating to complaint in C.C.No.4642 of 2015 on the file of the Fast Track Court No.III, Saidapet, Chennai, and quash the same.

2.The case of the complainant/respondent is as follows :

2.1.The petitioner Nos.2 to 4 are jointly running business in the name and style of "Shree Ambal Land Promoters (P) Ltd" in the rank of Directors and the nature of the business of the petitioners are buying and selling lands by entering into Joint Venture Agreement, Power Holder and other relevant contractual and promotional activities and thereby, selling the same to the third parties.

2.2.The respondent/complainant, her brother T.V.Rajendran and her sisters M.Malliga, J.Jamuna, K.Kanniammal and Shyamala are the absolute owners of the land measuring to an extent of 2 Acres 92 cents, comprised in Survey Nos.492/2, 495/2C, 495/2B, 493/3, 493/2C, 509/2B and 508/1, situated at Kerugambakkam, Sriperumbudur Taluk, Kancheepuram District. They intended to sell their properties, and hence, they approached the petitioners, who are into the said business, and had entered into an agreement with the present land owners and also with the other land owners on various dates and thereafter, a combined General Power of Attorney, dated 05.12.2014, was executed between the respondent's family members and the petitioners and the same was registered as Document No.9026 of 2014 before the Sub-Registrar's Office, Pammal, Chennai.

2.3.After execution of the General Power of Attorney, the petitioners divided the larger extent of land into plots and formed a layout in the name and style of "Sai Avenue" and started selling the plots to third parties and receiving the sale consideration on behalf of the respondent and her family members.

2.4.On account of such sale transactions, the respondent/complainant is also entitled to the share in the sale consideration received by the petitioners and only with a view to clear the petitioner's liabilities towards the respondent and her sisters, the petitioner issued cheques bearing Nos.003982 (Kanniammal), 003983 (Amutha – complainant herein), 003984 (Shyamala), drawn on Tamil Nadu Mercantile Bank, Porur Branch, Chennai, dated 05.01.2015, as part payment on 05.01.2015.

2.5.The cheque bearing No.003983 dated 05.01.2015 for a sum of Rs.6,41,000/- issued in favour of the respondent/complainant ("disputed cheque" for the sake of convenience) was deposited with the Indian Bank, Madras University Campus Branch, for payment on 09.01.2015, but the same was returned unpaid on 10.01.2015 on the ground "Funds insufficient", which was duly informed to the petitioners.

2.6.Thereafter, the petitioners alleged to have apologized to the respondent for the dishonour of the cheque and requested her to re-deposit the same in the Bank for fresh clearance. On the assurance and instructions, and believing the words of the petitioners, the said cheque was re-deposited again with the Indian Bank, Kotturpuram Branch, on 27.02.2015, however, the same was dishonoured again on 02.03.2015 with a memo stating "Funds Insufficient".

2.7.Shymala, sister of the respondent/complainant, also faced similar circumstances, however, this Criminal Original Petition pertains to Amutha (complainant in C.C.No.4642 of 2015).

2.8.Therefore, a legal notice was issued on 19.03.2015 on behalf of the respondent and her sister Shyamala, to the petitioners herein.

2.9.The petitioners replied to the legal notice by way of reply notice, dated 07.04.2015, stating that the said cheque was issued only for security purposes and cannot be taken into account.

2.10.The petitioners have mischievously and intentionally issued the aforesaid cheque with ulterior designs and further instructed the respondent to present the same for encashment again, knowing fully well that the said cheque would not be honoured on presentation, on account of insufficiency of funds in the account.

2.11.Hence, the respondent/complainant filed a complaint before the Judicial Magistrate, Fast Track Court No.III, Poonamallee, against the petitioners herein, for the offence under Section 138 of the Negotiable Instruments Act, 1881 ("N.I. Act" for brevity), and the same was taken cognizance by the learned Magistrate in C.C.No.4642 of 2015.

3.To quash the said complaint in C.C.4642 of 2015, the accused have approached this Court by way of this Criminal Original Petition.

4.The petitioners/accused state that the respondent herein, who is the complainant, filed a complaint under Section 138 of the N.I. Act, in C.C.No.4642 of 2015, on the ground that the petitioners are alleged to have issued a cheque bearing No.003983, dated 05.01.2015, drawn on Tamil Nadu Mercantile Bank, Porur Branch, Chennai, for an amount of Rs.6,41,000/- and have mischievously and intentionally allowed the cheque to be dishonoured with an ulterior motive to cheat the respondent/complainant. The petitioners and the respondent and her family members entered into a Power of Attorney on 05.12.2014 to sell their properties. After the execution of the Power of Attorney, the petitioners herein improved the property and the same was divided into plots and sold to various parties, and at the time of sale, the petitioners handed over the respective shares of the respondent and her brother and sisters by way of cash, cheques or Demand Drafts.

5.The petitioners would further state that, on the process of selling the plots to the 3rd parties, the respondent, two of her sisters, namely, Shyamala and Kanniammal, were urging them to settle the final amount and due to their insistence, the 2nd petitioner herein issued cheques to the said persons, by Cheques bearing Nos.003982 (Kanniammal), 003983 (Amutha – complainant herein), 003984 (Shyamala), drawn on Tamil Nadu Mercantile Bank, Porur Branch, Chennai, dated 05.01.2015, without filling the date in the cheques and handed over the same to them for the security purposes and assured that the payments will be made as soon as possible and it was agreed by the respondent and her sisters that they will return the said cheques after payment of money.

6.It is the case of the petitioners that, on the urgency made by the respondent and her family members, the petitioners entered into a Memorandum of Understanding, dated 11.02.2014, with one Mr.P.Sunil, Proprietor of M/s.Jain Properties, and thereby, the petitioners executed sale deeds to the purchasers of M/s.Jain Properties and paid the amount due to the respondent (Amutha) and her sisters through M/s.Jain Properties by way of cheques bearing Nos.2028536 (Amutha), 2028537 (Shyamala), both dated 10.02.2015, drawn on Union Bank of India, West Mambalam Branch, Chennai, that were presented on 11.02.2015 and 12.02.2015 respectively. The cheque No.38421 dated 10.02.2015, in favour of Kanniammal, drawn on Axis Bank, West Mambalam Branch, Chennai, for an amount of Rs.6,41,000/- was presented on 12.02.2015. In the meanwhile, the cheque bearing No.003983 dated 05.01.2015 issued to the respondent (Amutha) was presented on 09.01.2015 and the same was dishonoured on the ground that there was no sufficient funds in the said account.

7.The petitioners submit that, when they have already informed the respondent and her family members not to present the cheques, without their knowledge or consent, the respondent has presented the disputed cheque. However, they informed the respondent that they have entered into a Memorandum of Understanding, dated 11.02.2014, with M/s.Jain Properties and in order to clear the dues to the respondent and her family members, they made request to M/s.Jain Properties, and based on the request, the said M/s.Jain Properties made payments to the respondent and her sisters on their behalf and the respondent/complainant (Amutha) received a cheque bearing No.2028536 dated 10.02.2015, drawn on Union Bank of India, West Mambalam Branch, Chennai, and she presented the same and encashed on 11.02.2015. Likewise, the other family members had also received cheques from M/s.Jain Properties on behalf of the petitioners and also encashed the cheques.

8.The petitioners further submit that the respondent and one of her sisters (Shyamala), without returning the cheques issued by the petitioners for the security purpose, had presented the cheques of the petitioner once again without the knowledge and consent of the petitioners in order to usurp money from the petitioners in an illegal manner. Only when the respondent sent a legal notice, the petitioners came to know that the cheques were presented by the respondent and her sister Shyamala. Thereafter, the petitioners requested them to return the cheques issued by them, but to the utter shock and dismay of the petitioners, the respondent and her sister informed that the petitioners had made delay in making payment and since the property values had also subsequently increased, they need further amount, and hence, refused to return the cheques. Hence, the respondent has filed the complaint to extract more money from the petitioners in an illegal manner.

9.The petitioners further submit that, after receipt of the legal notice issued by the respondent, the petitioners sent a legal notice, dated 07.04.2015, explaining and narrating the entire facts of the case and informing that the cheque payments were already made by M/s.Jain Properties on their behalf and there is no due, claim or liability towards the respondent or their family members and further calling upon the respondent, her sister Shyamala, to return the disputed cheques. The reply notice dated 07.04.2015 was received by the respondent, however, she has not chosen to return the cheque, but has filed the complaint in C.C.No.4642 of 2015, which is highly illegal, unlawful and liable to be quashed.

10.In this background of facts, the learned counsel for the petitioners invited the attention of this Court to the letter of M/s.Jain Properties, dated 10.02.2015, addressed to the petitioner, wherein, it is stated that the respondent (Amutha), her sisters (Shyamala and Kanniammal) were paid by M/s.Jain Properties by way of cheques bearing Nos.2028536 (Amutha), 2028537 (Shyamala) and 38421 (Kanniyammal) for a sum of Rs.6,41,000/- each, totally Rs.19,23,000/, and the same was informed to the petitioners herein. The learned counsel further submitted that, consequent to the payment of the amounts to the respondent and her family members, Shree Ambal Land Promoters (P) Ltd., the petitioner herein, sent a “Stop Payment” notice on 27.02.2015 to the Bank, which is also enclosed in the Typed Set of Papers.

11.In order to substantiate the submission that M/s.Jain Properties have paid the amount to the respondent/complainant and her sisters, the learned counsel invited the attention of this Court to the Statement of Account in respect of M/s.Jain Properties with Union Bank for the period from 01.02.2015 to 28.02.2015 and submitted that, on 11.02.2015, the cheque bearing No.2028536 issued by M/s.Jain Properties to the respondent (Amutha), W/o.Thirugnanam, has been encashed. The learned counsel also referred to the Statement of Account of M/s.Jain Properties with Axis Bank and submitted that, on 12.02.2015, the cheque bearing No.38421 issued to Kanniammal has also been encashed. The learned counsel also pointed out that a cheque bearing No.193647 drawn on Union Bank, West Mambalam Branch, Chennai, has been issued by the petitioners to the respondent/complainant, for an amount of Rs.20,00,000/-. Therefore, the learned counsel submitted that, as they have already settled the entire amount, the complaint lodged by the respondent has to be quashed.

12.The learned counsel for the petitioners invited the attention of this Court to the reply notice sent by the petitioners, dated 07.04.2015, and submitted that, as per the agreement and understanding between the petitioners and the respondent and her family members, whenever sale took place, the petitioners used to pay the sale consideration amounts, however, after selling major portion of property, the petitioners offered their willingness to buy the rest of the property on their own and hence, the petitioners issued the aforesaid cheque bearing No.003983, dated 05.01.2015, for a sum of Rs.6,41,000/- and it was clearly informed that the cheque was issued only for security purposes and after mobilizing funds, the same will be handed over to the respondent and it was agreed by the respondent that, at the time of repayment, she would return the aforesaid cheque given by the petitioners.

13.The learned counsel for the petitioners further submitted that the statement of accounts produced would show that they have already paid the amount of Rs.6,41,000/- due to the respondent and the same would prove that the respondent/complainant is purposefully holding the cheque of the petitioners and without returning the same, the respondent has adopted hook and crook method in order to grab more money from them, which is highly illegal, unlawful and a clear case of cheating and the petitioners would initiate legal proceedings against the respondent. The learned counsel further submitted that the petition should be allowed on the ground that already the matter has been settled between the parties.

14.Per contra, the learned counsel for the respondent/complainant, reiterated the averments in the complaint and submitted that, admittedly, the General Power of Attorney, dated 05.12.2014, was executed between the parties to sell the property belonging to the respondent/complainant and her brother and sisters, and to receive the sale consideration on their behalf. After execution of the General Power of Attorney, the petitioners divided the larger extent of land into plots and formed a layout in the name and style of “Sai Avenue” and started selling the plots to third parties and receiving the sale consideration on behalf of the respondent and her family members.

15.The learned counsel for the respondent/complainant further submitted that, only with a view to clear the liabilities towards the respondent/complainant, the petitioners issued the disputed cheque for a sum of Rs.6,41,000/-, and the contention of the petitioners that the cheque was not issued towards the liability, but only for security purpose, is factually incorrect. The learned counsel further submitted that, only with a criminal intention, the petitioners have directed the respondent to re-deposit the disputed cheque, even when they very well knew that the same will not be honoured on account of insufficiency of funds.

16.The learned counsel for the respondent referred to the decision of the Hon'ble Supreme Court of India in the case of Rajeshbhai Muljibhai Patel and others v. State of Gujarat and another [Crl.A.Nos.251-252 of 2020 dated 10.02.2020], wherein, it was held by Hon'ble Mrs. Justice R.Banumathi that, once the issuance of cheque is admitted/established, the presumption would arise under Section 139 of the N.I. Act in favour of the holder of cheque and the burden lies upon the accused to rebut the presumption by adducing evidence.

17.The learned counsel for the respondent further submitted that, in the reply notice, the petitioners have claimed a sum of Rs.1,00,000/- as compensation for damages. The learned counsel contended that, when there are lots of transactions between the petitioners herein and the respondent and her family members, wherein their properties are being sold, there are so many different amounts to be paid to the respondent and her family members and that being the case, the contention of the petitioners that they have settled the final amount through M/s.Jain Properties for a sum of Rs.6,41,000/- by way of cheque bearing No.2028536, pertains to a different transaction and there is no full and final settlement between the parties so far and the said act of the petitioners to grab more money cannot be accepted by the respondent/complainant.

18.In response to the aforesaid submission of the learned counsel for the respondent, the learned counsel for the petitioners submitted that, only since the entire money has been settled through M/s.Jain Properties, the petitioners have issued “Stop Payment” instruction to the Bank. However, the said counter statement is denied by the respondent's counsel by stating that there is no iota of proof in the said contention made by the learned counsel for the petitioners, by stating that, when larger extent of lands are being sold through various transactions, they are supposed to get various amounts from the petitioners and the amount which the petitioners are referring to is one of such transactions and denied the contention of the petitioners that it is a full and final settlement. However, the learned counsel for the petitioners submitted that the amount due has been paid in full on behalf of the petitioners by M/s.Jain Properties.

19.Heard the learned counsel on either side and perused the entire materials available on record.

20.On a perusal of the materials placed on record and the arguments of the learned counsel on either side, the following facts have been established beyond doubt in this case :

- The respondent and her family members entered into a General Power of Attorney dated 05.12.2014 with the petitioners, who are in the business of selling the land and receiving the sale consideration on behalf of their clients.
- The petitioners improved the property and starting selling the land to various third parties and they used to pay the sale consideration to the respondent and her family members by way of cash, cheque or Demand Draft.
- Admittedly, the 2nd petitioner has issued a cheque dated bearing No.003983, dated 05.01.2015, drawn on Tamil Nadu Mercantile Bank, Porur Branch, Chennai, for an amount of Rs.6,41,000/- to the complainant/respondent herein.
- The said cheque was presented by the complainant for payment on 09.01.2015 in the Indian Bank, Madras University Campus Branch, and the same was returned unpaid on 10.01.2015 on the ground “Funds Insufficient”.
- Thereafter, the cheque has been re-deposited for payment on 27.02.2015 in the Indian Bank, Kotturpuram Branch, however, it was again dishonoured on 02.03.2015 with the remarks “Funds Insufficient”.
- M/s.Jain Properties have issued a cheque bearing No.2028536 for a sum of Rs.6,41,000/-, drawn on Union Bank of India, West Mambalam Branch, Chennai, to the respondent and the same has been encashed on 11.02.2015, which is substantiated by the Statement of Accounts produced on the side of the petitioner.

21.From the above, it is very clear that the issuance of the disputed cheque by the petitioner is admitted and established. Primarily, once the issuance of cheque is admitted/established, the presumption would arise under Section 139 of the N.I. Act in favour of the holder of cheque and the burden lies upon the accused to rebut the presumption by adducing evidence. As held by the Hon'ble Supreme Court in the case of Rajeshbhai Muljibhai Patel (supra), until the accused discharges his burden, the presumption under Section 139 of N.I. Act will continue to remain and it is for the accused to adduce evidence to rebut the statutory presumption. The Hon'ble Supreme Court has further held that the case therein involves various disputed questions of facts which need to be adjudicated after the parties adduce evidence, and the complaint under Section 138 of the N.I. Act ought not to have been quashed by the High Court by taking recourse to Section 482 Cr.P.C. Though the Court has power to quash the criminal complaint filed under Section 138 of the N.I. Act on the legal issues like limitation, etc., criminal complaint filed under Section 138 of the N.I. Act ought not to have been quashed and further held that, under Section 482 Cr.P.C., it is for the Court to decide there is prima facie case made out by the petitioner to quash the same.

22.From the factual matrix obtaining in this case, the rival submissions/disputed facts submitted before this Court are as follows :

- The complainant/respondent states that the cheque was presented and re-presented at the instance of the petitioners. Contrarily, the petitioner denies the same by contending that they informed the respondent not to present the cheque and they came to know about the dishonour only after issuance of legal notice by the respondent/complainant.
- The petitioners state that the cheque issued by M/s.Jain Properties is on their behalf and since the same has been encashed, a full and final settlement has been made in respect of the respondent. Contrarily, the respondent denies the same by stating that the full and final settlement has not been reached between the parties.
- The petitioners state that, after major portion of the land was sold out, the petitioners were willing to buy a piece of the land belonging to respondent, on their own, and hence, they gave the disputed cheque to the respondent only for security purpose and it was agreed by the respondent that

she will return the same after payment is made. Contrarily, the respondent denies this submission by stating that there were various transactions between the respondent and the petitioners and there were various amounts due to the respondent and the amount settled by M/s.Jain Properties is one such amount which pertains to an entirely different transaction and hence, the disputed cheque issued by the petitioners is only towards the liability to the respondent and not for security purpose.

23.As could be seen from the foregoing paragraphs, the parties have put forth disputed facts, which can be adjudicated only by letting in evidence by the parties, and such an exercise cannot be done by this Court under Section 482 Cr.P.C. All these disputed questions of facts have to be adjudicated by adducing evidence and it is well settled that, this Court, while exercising its jurisdiction under Section 482 Cr.P.C., cannot go into these disputed questions of facts and adjudicate the issues. Therefore, this Court finds that the issues involved in this case are factual in nature, which needs to be tried before the trial Court. In view of the same, this Court is not inclined to quash the complaint in C.C.4642 of 2015.

24.Hence, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed. The trial may be completed within a period of eight months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

The Judicial Magistrate,
Fast Track Court No.III,
Saidapet, Chennai.

+1cc to M/s.S.Bruno Cruz, Advocate, S.R.No.43350

Crl.O.P.No.9038 of 2016

SR-II(CO)
SB(27/09/2021)