IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2021

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.Nos.5718 & 5724 of 2021 and
Crl.M.P.Nos.3684, 3686, 3698 & 3699 of 2021

Inayat Najmuddin Bharmal
... Petitioner/Accused No.4 in both cases

Vs.

Rekha Surana
... Respondent/Complainant in both cases

COMMON PRAYER: Criminal Original Petitions are filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.Nos.5854 & 5869 of 2019 respectively on the file of the Fast Track No.II, Metropolitan Magistrate, Allikulam, Chennai, filed by the respondent against the petitioner for commission of alleged offence U/s 138 of N.I Act and quash the same.

For Petitioner : Mr.Y.Mohamed Ghouse in both cases

For Respondent : Mr.Swami Subramanian in both cases

COMMON ORDER

These Criminal Original Petitions have been filed to quash the proceedings in C.C.Nos.5854 & 5869 of 2019 pending on the file of the Metropolitan Magistrate, Fast Track Court No.II, Egmore, Chennai.

2.The petitioner/A4 is facing trial on the private complaints filed by the respondent accused in C.C.Nos.5854 & 5869 of 2019, for offence under Section 138 of the Negotiable Instruments Act, 1881.

3.The gist of the case is that A1 is the Partnership Fir dealing with hardware business in the name of M/s.Najmuddin & Sons and A2, A3, and the petitioner/A4 are its partners. The petitioner approached the respondent as partner of A1 Firm for business loan to the tune of Rs.50,00,000/- for development of A1 Firm by pledging original title deeds and it was agreed by the petitioner that he would settle the amount in 10 monthly installments with an interest of 12% per annum. Out of 10 installments that was agreed to be paid in repayment of the loan availed, 9 installments have been paid by the accused, but failed to pay the 10th installment. Thereafter, the petitioner again approached the respondent for a business loan on 18.04.2017 to the tune of Rs.51,00,000/- for the development of A1 Firm and it was agreed by the petitioner to settle the amount in 12 installments with interest of 12% per annum. On 18.04.2017, the respondent issued 1 cheque of Rs.6,00,000/- and 9 cheques of Rs.5,00,000/- each, in the name of A1 Firm to the petitioner.

4.On 01.08.2017, again the petitioner as partner of A1 Firm had availed another business loan to the tune of Rs.50,00,000/- for the development of A1 Firm and it was agreed by the petitioner to settle the amount in 24 installments with interest of 12%. Hence, 10 cheques of Rs.5,00,000/- each were given in the name of A1 Firm by the respondent.

5.While this being so, on 15.04.2019, the petitioner had sent a notice to the respondent denying the above transactions. On receipt of the same, a notice has been sent by the respondent on 11.05.2019 with full transactions details. On 29.04.2019, A2 had sent a notice stating that she filed a suit in O.S.No.2944 of 2019 before the learned VI Assistant City Civil Judge, Chennai restraining the respondent from presenting the cheques and from disturbing the business of A1. The total due to be repaid by all the accused is to tune of Rs.62,00,000/-. The respondent requested the accused to make payment, for which the petitioner got five cheques bearing Nos.610641, 610639, 610640 and 610635, 611116 drawn on DCB Bank Parrys Corner Branch from A2 and the same were handed over to the respondent. When he presented the first three cheques on 29.04.2019 and other two cheques on 02.05.2019 for encashment, the same were dishonored for the reason that 'STOP PAYMENT'. Due to which, the respondent issued a legal notice, dated 27.05.2019 to the accused calling them to pay the cheque amount within 15 days from the date of receipt of the notice, for which the accused sent a reply on 12.06.2019 denying the entire transaction. Hence, he filed the above two complaints before the trial Court.

6.The grounds raised by the learned counsel for the petitioner is that the petitioner neither partner of A1 Firm, nor drawn any alleged cheque. The trial Court on error in taking cognizance of the complaints and issuing summons to the petitioner. The learned counsel further submitted that the petitioner is neither signatory to the cheques, nor the cheques were drawn from the bank account of the petitioner. The petitioner only as a guarantor, handed over those cheques of A1 Firm to the respondent.

7.In support of his submissions, the learned counsel for the petitioner relied on the decision of the Hon'ble Apex Court in the case of “Pooja Ravinder Devidasani Versus State of Maharashtra & Anr., in Criminal Appeal Nos.2604-2610 of 2014”, wherein it had held that 'so far as the Letter of Guarantee is concerned, it gives way for a civil liability which can be pursued the remedy before the appropriate Court, since the cheques in question were issued by virtue of such Letter of Guarantee, based on which the petitioner cannot be prosecuted'. Hence, he prayed for quashing of the complaints against the petitioner.

8.The learned counsel for the respondent filed typed set and submitted that A1 is the Partnership Firm dealing with hardware business. A2, A3 and the petitioner/A4 are active participants in the day to day affairs of A1 Firm. The petitioner/A4 projecting himself as a partner of the 1st respondent Firm, brought business loan from the respondent on three occasion and there have been several transactions between them. In discharge of the liabilities, totally five cheques were given, which got dishonored. Following the statutory provisions, the above complaints came to be lodged before the trial Court. On the legal notice issued by the respondent, the petitioner sent a reply with false allegations against the respondent. Further, the respondent produced the letter executed by the petitioner in favour of him seeking loan of Rs.50,00,000/- for the property situated at plot No.D8, Maharaja Surya Rao Road, Alwapet, Chennai, wherein the petitioner had signed as partner of A1 Firm. All the amount had been transferred in the name of A1 Firm and the same had been credited to the accused account and the bank account statement of the respondent has been produced to that effect.

9.The learned counsel for the respondent further submitted that the partnership deed produced by the learned counsel for the petitioner is an unregistered deed. The deed is dated 01.01.2006, in which it is mentioned that one month prior i.e., on 01.12.2005, the petitioner has expressed his desire to retire from A1 Firm. This document is an unregistered and got up document, which has been prepared subsequently for the purpose of defence. If such being the case, there is no necessity for the petitioner to handover the letter to the respondent in favour of A1 Firm. Further, the accused have also sent a reply for the statutory notice issued by the respondent. The defence of the petitioner is that the cheques are given as security purpose and not for encashment and he is not a partner of A1 Firm. In support of the same, he relying upon the unregistered partnership deed and the Certificate of Registration issued by the Commercial Tax Department. Thus, the petitioner as partner of A1 Firm was carrying on the day to day affairs along with the other accused. Now, he is attempting to wriggle out that he is not a partner, is only to escape from his liability.

10.On considering the rival submissions and on perusal of the materials, it is seen that there are enough materials against the petitioner to proceed with the trial.

11.The main contention of the petitioner is that the partnership deed, dated 01.01.2006 reflects the petitioner was resigned from the A1 Firm on 01.12.2005. Admittedly, the deed is only unregistered deed. Hence, it would not be accepted straight away. As could be seen from the Certificate of Registration from the Commercial Tax Registration, it is not in dispute that A1 is a partnership firm. In this case, all the payments were received in the name of the A1 Firm. Further, the petitioner as partner of A1 Firm had given a letter to the respondent while seeking loan and the reply has been sent by all the accused. The petitioner claiming that he was only acted as consultant of A1 Firm is to be decided only during the trial by way of examination of witnesses. Hence, the facts are disputed which have to be necessarily decided during trial.

12.In view of the same, this Court is not inclined to entertain these petitions and the same are liable to be dismissed and, are dismissed. Considering the pendency of the cases from the year 2019, this Court directs the trial Court to complete the trial within a period of three months from the date of receipt of a copy of this order. Consequently, the connected Criminal Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-IX)

// True Copy //

Sub Assistant Registrar

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To

The Metropolitan Magistrate,
Fast Track Court No.II,
Egmore, Chennai.

+2CCs to Mr.M.Rajasekaran, Advocate, SR.No. 47316

Crl.O.P.Nos.5718 & 5724 of 2021

SJ(CO)
B.VC (06/10/2021)