



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2021

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. No.24935 of 2017
and CRL.M.P.Nos.14387 & 14388 of 2017

N.Prabhakaran

.. Petitioner

Vs.

Praveen Bohra Jain

... Respondent

PRAYER:

Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records in C.C.No.950 of 2015 pending on the file of the learned Judicial Magistrate, Ooty and quash the same.

(Amended as per the order of the honourable Court dated 14/12/2017 made in Crl MP.15798/2017 in Crl OP.24935/2017.)

For Petitioner : Mr.M.Guruprasad

For Respondent :Mr.R.Vivekananthan

ORDER

This Criminal Original Petition has been filed to call for the records in C.C.No.950 of 2015 pending on the file of the learned Judicial Magistrate, Ooty and quash the same.

2. The main submission of the learned counsel for the petitioner is that the cheque is said to have been issued only towards the time barred debt. Therefore, the same cannot be enforced in the eye of law. In support of his submission, he also relied upon the judgment of this Court reported in (2012 (2) L.W.(Crl.) 516) in the case of Sama Dharman Vs. Natarajan.

3. Having cited the above judgment, the learned counsel fairly submitted that this judgment is later set aside by the



Hon'ble Apex Court and the same is reported in (2021 (6) SCC 413) in the case of S.Natarajan vs. Sama Dharman and another.

4. This Court has held in Sama Dharman's Case (Supra) that to comply the provisions under Section 25(3) of the Contract Act, unless a specific contract in form of novation is created with regard to payment of time barred debt, Section 25(3) of the said Act cannot be invoked. However, the said judgment has been set aside by the Hon'ble Apex Court this has been reported in (2021 (6) SCC 413) in the case of S.Natarajan vs. Sama Dharman and another. Therefore, the judgment reported in Sama Dharman Vs. Natarajan (Supra) rendered by this Court no longer exists in the eye of law and over ruled.

5. It is stated by the learned counsel that the same judgment is relied by this Court in subsequent decision. As the very judgment is set aside, same cannot be valid in the eye of law, it is to be noted that past consideration is valid consideration under law. Therefore, question of some other contract in the form of novation to validate the past consideration does not arise at all. In such view of the matter, it is left open to the parties to raise their defence before the Trial Court.

6. It is relevant to refer the judgment of this Court in CrI.R.C.492 of 2014 in the case of M.Danabal vs. Natarajan, wherein, it is stated in Para 24 is as follows:

24. To sum up, the cheque in this case has been issued after the expiry of three years from the date of the debt and therefore, the debt in this case was not a legally enforceable debt when the cheque was issued. A fortiori the prosecution founded under Section 138 of the N.I. Act on such a cheque is not maintainable and the accused deserves to be acquitted.

7. It is relevant to refer three Division Bench judgments in the case of Mrs.Jayashree Jayanth vs. Mr.N.Krishnaswamy Mrs. Premaleela Krishnaswamy and others reported in 2017 SCC Online Mad 26307, N.Namberumal Chetti vs. Veeraperumal Pillai and others in O.S.A.Nos.66 and 125 of 1928 and Devukutty Amma vs. Madhusudanan Nair in A.S.No.363 of 1988. Courts have held that time barred debt is valid consideration. In such view of the matter, having regard to the fact that time barred debt is valid consideration, it cannot be said that it is not enforceable and there is no legally enforceable debt.

8. Accordingly, this Criminal Original Petition is



dismissed. Consequently connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

msv

To

1. The Judicial Magistrate Court
Ooty.

Copy to

The Section Officer,
Criminal Section,
High Court, Madras-104.

+1cc to Mr.R.Vivekananthan, Advocate, S.R.No.62573
+1cc to Mr.M.Guruprasad, Advocate, S.R.No.63196

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CT/17/12/2021