IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.08.2021

Pronounced on : 25.08.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.No.29219 of 2018
and
Crl.M.P.No.17117 of 2018

Mrs.S.Vijayalakshmi .. Petitioner

Vs.

Mr.Abisheik Jain .. Respondent

Prayer: Petition filed under Section 482 of Cr.P.C., to call for the records of the impugned proceedings in C.C.No.1684 of 2018 on the file of the learned Magistrate, Fast Track Court No.II, Egmore, Chennai and quash the same.

For Petitioner : Mr.S.Peer Mohamed

For Respondent : Mr.M.Arvind Kumar

O R D E R

This petition has been filed to call for the records of the impugned proceedings in C.C.No.1684 of 2018, on the file of the learned Magistrate, Fast Track Court No.II, Egmore, Chennai and quash the same.

2. The case of the petitioner is that the petitioner is the owner of the vehicle bearing Reg.Nos.TN 02A 4559 and TN 02 V 9086. The petitioner through her husband has availed vehicle loan on 25.03.2010 and 24.04.2010 from one Vinod Lodha of Sudha Finance. At the time of availing loans, she had given two blank cheques bearing Nos.578186 and 578187, drawn on UCO Bank, Korattur Branch, Chennai and the petitioner had repaid the loan amount and got NOC from Vinod Lodha. However inspite of repeated demand, the said person has not returned the two blank cheques given as security. She was surprised to receive the legal notice dated 18.06.2014, for the dishonour of cheque bearing no.578187, drawn on UCO Bank, Korattur Branch, Chennai, for a sum of Rs.13,50,000/- from the respondent herein. The said Vinod Lodha with an ulterior motive, to cheat the petitioner, had handed over the two blank cheques, given as security, to his son. When the petitioner along with her husband met the respondent and demanded the return of the two cheques, at that time, she was intimidated and forced to sign the Memo of Compromise dated 24.07.2014 prepared by the respondent and after getting her signature in the Memo of Compromise, he

had returned the cheque bearing No.578187 to the petitioner. In the said Memo of Compromise, the respondent induced the petitioner to pay a balance amount of Rs.10,00,000/- within 9 months from the date of the said compromise. Thereafter the respondent by intimidation and extortion received Rs.5,11,000/- from the petitioner for the return of the cheque bearing No.578186. However, even after receipt of the said amount which the petitioner was not liable to pay, the respondent filled up the blank cheque bearing No.578186 for Rs.10,00,000/- on his own and presented it in the Bank and the same was returned for "Insufficient Funds". Subsequently, the respondent has issued a legal notice on 12.09.2017 for payment of the debts. Immediately the petitioner has sent a detailed reply to the respondent on 22.09.2017 through her advocate. Even then, the petitioner has filed the present impugned complaint before the Trial Court. Challenging the same, the present petition is filed to quash the complaint.

3. The learned counsel appearing for the petitioner submitted that the petitioner's husband used to avail vehicle loan from Vinod Kumar Lodha of Sudha Finance and the two cheque were given as security. Even though the amount due and payable was paid, the cheques which were given as security

was not returned back to the petitioner. The said Vinod Kumar Lodha had handed over the cheques to his son, who is the respondent herein and he made illegal demands on the petitioner and by using intimidation and coercive methods, the respondent had received totally Rs.5,11,000/- from the petitioner and the petitioner was also forced to sign the Memo of Compromise dated 24.07.2014, prepared by the respondent. Inspite of getting the signature in the Memo of Compromise, the respondent had not returned the cheque bearing No.578187 to the petitioner, but presented the same at the bank, which was returned. All of a sudden, the petitioner has received a legal notice from the respondent as if she issued a cheque for a sum of Rs.10,00,000/- which was returned dishonoured, for which the petitioner has also sent reply notice dated 22.09.2017.

4. Further it is the submission of the learned counsel appearing for the petitioner that proviso (a) to Section 138 of the Negotiable Instruments Act, requires that the cheque to be presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier. However, the cheque was given for the purpose of security in the year 2011, which has been misutilised by the

respondent in the year 2014 and on the date, the cheque has lost its validity and, therefore, prosecution based on an invalid cheque is wholly unsustainable. Therefore, prays for quashment of the complaint.

5. In support of his contention, the learned counsel appearing for the petitioner has relied upon the decision of the Hon'ble Apex Court in ***1993 (4) SCC 424 (Anil Kumar Sawhney Vs. Gulshan Rai).***

6. *Per contra,* the learned counsel appearing for the respondent submitted that admittedly pursuant to the Memo of Compromise entered by the petitioner with the respondent on 24.07.2014, the petitioner has agreed to settle the amounts due towards the hand loan obtained on various dates. The petitioner had totally paid only a sum of Rs.4,30,000/- and she is due and liable to pay the balance amount of Rs.12,17,680/-. Towards repayment of the amounts due, cheque bearing No.578186 was issued in favour of the respondent and the cheque was presented for collection on 28.08.2017, which was returned by the bank showing the reason as "Funds Insufficient. Such being the case, there was a legally enforceable debt as clearly mentioned in the Memo of Compromise dated 24.07.2014 and the same

could not be denied by the petitioner. Hence the petitioner has committed an offence punishable under Section 138 of NI Act and prays for dismissal of this petition.

7. The fact in the present case is not in dispute that there was a Memo of Compromise between the parties dated 24.07.2014. It is the claim of the petitioner that by force and intimidation, the said Memo of Compromise was entered into between the parties. Further it is admitted by the petitioner that she had issued two cheques bearing No.578187 and 578186, as security towards the vehicle loan obtained by the husband of the petitioner. However as per the Memo of Compromise, the petitioner is liable to the respondent for a sum of Rs.10,00,000/-. While being so, it is the claim of the petitioner that she did not issue any cheques towards her liability, as she paid all the dues towards the loan obtained from one Vinod Kumar Lodha. On the other hand, it is the claim of the respondent that there is a legally enforceable debt against the petitioner as clearly mentioned in the Memo of Compromise to pay the balance amount of Rs.12,17,680/-.

8. Though it is the case of the petitioner that she has discharged her

legal liability towards the loan obtained by her husband, however, the memo of compromise entered into between the parties stares at the petitioner. Though it is the case of the petitioner that the said memo of compromise has been obtained from her by way of threat and coercion and the cheque had been misutilised by the respondent, however, those are points that have to be canvassed by the petitioner at the time of trial and this Court, sitting under Section 482 Cr.P.C., cannot go into the merits of the case. The grounds raised by 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. Therefore, this Court is not inclined to interfere with the proceedings pending before the Court below.

9. It is represented by the learned counsel appearing for the petitioner that this Court may issue a direction to the Trial Court to expedite the trial and complete the same as early as possible. He would further submit that the appearance of the petitioner before the Trial Court may be dispensed with.

10. Accordingly, this petition is disposed of directing the trial court to dispose of C.C. No.1684/2018 as expeditiously as possible as per seniority of the case. It is left open to the petitioners to raise all the grounds before the trial Court and the same shall be considered on its own merits and in accordance with law. The petitioner and respondent are directed to co-operate with the trial court for the early completion of trial. Further, taking into consideration the request as made by the learned counsel for the petitioner, his appearance before the trial court is dispensed with except for their appearance for the purpose of receiving the copy of the proceedings u/s 207 Cr.P.C., framing of charges, questioning under Section 313 Cr.P.C. and on the day on which judgment is to be pronounced. However, if for any particular reason, the presence of the petitioners is necessary, the trial court, at its wisdom, shall direct their appearance on those days. Consequently, connected miscellaneous petitions, if any, are closed.

25.08.2021

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Speaking Order/ Non Speaking Order
Index: Yes/ No

Internet: Yes/ No
sk/GLN

To

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

2.The Public Prosecutor,
High Court of Madras, Chennai 600 104.

M.DHANDAPANI,J.
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Pre-delivery order in
Crl.O.P.No.29219 of 2018

25 .08.2021