BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 25.01.2021

DATE ON WHICH PRONOUNCED : 22.02.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P.(MD)No.5201 of 2017
and
Crl.MP(MD)No.3670 of 2017

The Managing Director,
M/s.Singer India Limited,
A-26/4, Second Floor,
Mohan Co-operative Industrial Area,
Mathura Road,
New Delhi-110 044. ... Petitioner/Accused No.1

Vs.

M/s.Balajee Agencies,
No.41, Fathima Hakkim Complex,
singarathope, Thiruchirapalli-8
represented by its Proprietor,
S.Sathiskumar
S/o.P.Santhanam,
No.7, 3rd Cross, Vadivel Nagar,
Woraiyur, Thiruchirapalli. ... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the proceedings in C.C.No.73 of 2017 on the file of the learned Judicial Magistrate No.I, Thiruchirapalli and quash the same.

For Petitioner : Mr.M.Prabhakaran for
Mr.T.Antony Arul Raj
For Respondent : Mr.N.Vijayarajan
(Legal Aid Counsel)

ORDER

This Criminal Original Petition has been to quash the proceedings in C.C.No.73 of 2017 on the file of the learned Judicial Magistrate No.I, Thiruchirapalli.

2. The facts of the case is that the respondent in this case is the dealer of the petitioner from 2007 onwards for the purpose of

selling the sewing machines manufactured by the petitioner company and in the course of the transaction the respondent issued cheques towards the discharge of the liability and those two cheques viz cheque no 674544 for a sum of Rs.3,03,090/- and cheque no 674556 for a sumof Rs.1,53,780 and were presented for payment by the petitioner for encashment on the dates mentioned in the complaint filed by the petitioner against the respondent and were dishonoured. Because of that dishonour in spite of the issue of notice the respondent did not come forward to pay the amount or discharge the liability so STC no 214 of 2011 and STC number 205 of 2011 were filed by the petitioner before the jurisdictional judicial magistrate court. On the receipt of the summons filed a private complaint before the Trial court stating that the cheques were not issued by the respondent towards any liability but even as per the statement of accounts presented by the petitioner these two cheques were accounted for. As per the business agreement between the parties, on the credit basis, the respondent used to issue cheques and those cheques even after proper accounting have been mis-utilised by the petitioner and thereby the petitioner has committed offences punishable under sections 120 B, 199, 406 and 467 Indian penal code. On the basis of the complaint, the trial court took cognizance of the offence and so petition is filed by the petitioner to quash the private complaint mainly on the ground that the issue of the cheques were not denied and disputed by the respondent and there was a legally enforceable liability and as such no offences are attracted and so the case before the trial court is abuse of the process of the court and it is liable to be quashed.

3. The Question which arises for consideration is whether the private Compliant filed by the respondent is purely an abuse of the process of the court or conversely whether the ingredients of the offences mentioned in the complaint are attracted warranting cognizance of the offences against the petitioner.

4. Even though this court should not to take into the factual aspects while deciding the petition filed under section 482 criminal procedure code, facts narrated in the complaint filed by the respondent, must also be taken into account, for the purpose of deciding the dispute.

5. The fact that the respondent and the petitioner were engaged in business transaction by which the respondent was acting as a dealer for the selling the sewing machines is not denied and disputed. It is also not denied that for the purpose of the transaction credit facility was extended to the respondent by the petitioner.

6. As per the documents produced by the respondent before the trial court it is seen that notice was issued by the respondent in reply to the notice issued by the petitioner over the dishonour of the disputed cheques. In reply it has been categorically admitted

by the respondent to the effect that as per the agreement, the respondent used to issue blank signed cheques in favour of the petitioner whenever the goods were supplied to him on credit basis. When the amount is paid it would be accounted. So according to the respondent this practice was going on between the parties and in due course of time some sort of dispute arose, as a result of which, the business transaction ended and the petitioner also directed the respondent to vacate premises where he was carrying on business. Those facts are irrelevant for our consideration. Now, according to the respondent, the cheques, which were issued towards discharge of the amount has been mis-utilised by the petitioner when dispute arose between them, by filling up the same with exorbitant amount foisted the false complaint. So, according to the respondent, the petitioner has committed the offences of forgery etc.,

7. Now, according to the petitioner, when the liabilities are admitted by the respondent and the issue of the cheques are also not denied. Facts, which are mentioned by the respondent, in the private compliant, will not attract any offence. According to the petitioner, those facts cannot be taken or be used for the purpose of filing the private compliant.

8. Next argument, on side of the petitioner, is that the Complaint has been filed belatedly knowing fully well that the notice was issued as early as in 2012and whereas the complaint has been filed much after of the period of limitation prescribed in section 468 of criminal procedure code.

9. According to the learned counsel for the petitioner by relying upon judgments of the Hon'ble Supreme Court reported in i) **Eicher Tractor Limited and Others Vs Harihar Singh and Another (2008) 16 Supreme Court Cases 763**, ii) **Mahindra & Mahindra Financial Services Limited and Another Vs Rajiv Dubey (2009) 1 Supreme Court Cases 706** and iii) **D.P.Gulati, Manager Accounts, Jetking Infortrain Limited Vs State of Uttar Pradesh and Another** have contended that when a criminal prosecution is initiated under Section 138 of the Negotiable Instruments Act, if any counter complaint is filed as a counter blast to delay the proceeding, then it will be an abuse of process of the Court and is liable to be quashed. According to the learned counsel for the petitioner, this is nothing, but, counter complaint, which has been filed by the respondent, much after launching of the prosecution by the petitioner under Section 138 of the Negotiable Instruments Act as well as the arbitration award passed by the Arbitrator over the liability.

10. The judgment of the Hon'ble Supreme Court reported in **Rajiv Thapar Vs Madan Lal Kapoor 2013 3 SCC 330** enumerated the steps required to be followed by the High Court before invoking jurisdiction under Section 482 of Cr.P.C. The steps are as follows:-

"7.........................

> ***30.1.Step one:*** *whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?"*
>
> ***30.2.Step two:****Whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused I.e the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?*
>
> ***30.3.Step Three:*** *Whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?*
>
> ***30.4.Step four:*** *whether proceeding with the trial would result in an abuse of process of the Court, and would not serve the ends of justice?*
>
> ***30.5.****If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused."*

11. Per contra, the learned counsel for the respondent would rely upon the judgment of the Hon'ble Supreme Court reported in **Pareshbhai Amrutlal Patel and Others Vs. State of Gujarat and Another 2020 12 SCC 569** and submits that a clear case of cheating, misappropriaion and fraudulent forging of documents have been alleged by the defacto complainant and so, the present case, must be transferred to the Court to which the cases filed under Section 138 of Negotiable Instruments Act are pending. According to him, the Hon'ble Supreme Court, thought it fit not to quash the counter case and thought it fit to direct joint trial. So, question which arises for consideration is **whether this is a fit case for quashment or for ordering joined trial.**

12. The next contention on the part of the respondent is that fraud has been committed by the petitioner by withholding the relevant document dated 01.10.2011, only the petitioner has played fraud upon the Court, while filing the private complaint, under Section 138 of Negotiable Instruments Act. He further rely upon the

constitutional judgment of the Hon'ble Supreme Court reported in **R.C.Lahoti and Others Vs Meenakshi Marwah and Another 2005 (2) Supreme 549** for the purpose of argument that for filing private complaint for the offence under Section 199 of IPC, there is no bar under Section 195(1) (b) (ii) of Cr.P.C. It is a contention on the part of the petitioner that to file a complaint for an offence under Section 199 of IPC, bar under Section 195 (1) (b) (ii) of Cr.P.C will come into force. But, here it is the case of the respondent that the blank cheque issued by him has been forged by filling the date and amount and after that, it was presented for encashment.

13. As per the judgment of the Hon'ble Supreme Court, the bar under Section 195 (1) (b) (ii) of the Cr.P.C will be attracted, only if the document inrespect of, which forgery is alleged, must have been committed subsequent to the filing of the same into the Court or subsequent to the document tendered in evidence. So, in the facts and circumstances of the case, the bar under Section 195(1)(b)(ii) of the Cr.P.C is not attracted. So, this argument is not available to the petitioner.

14. From the analysis of the facts and circumstances of the case, it is clearly seen that the respondent did not take any action either for giving a police complaint or for filing a private complaint, soon after, the receipt of notice of demand issued by the petitioner inrespect of those two disputed cheques. Moreover, he has also suffered an award in the arbitration proceedings in respect of these two disputed cheques. On 14.08.2014, wherein, the respondent remained exparte inspite of several opportunities given to the respondent. But, he did not participate in the arbitration proceedings. So, even after that, he did not take any action for filing complaint or information to the police. The present prosecution was initiated, only in the year of 2015. The reason for the long delay is also not clearly stated by the respondent in the complaint.

15. In respect of disputed cheques, there is a clear admission on the part of the respondent to the effect that as per the agreement between the parties, it was the practise of issuing blank cheques, whenever, goods are delivered on credit basis. When cash is paid towards the delivery of the goods, it will be accounted. Along with the complaint, account statement issued by the petitioner is also filed. Perusal of the accounts statement shows that whenever, there was supply of goods on credit basis, the respondent used to send cheque, which according to him, signed blank cheque and whenever, amount is paid, it was given credit. As per the statement of accounts, it is seen that as on 30.09.2011, the closing balance is Rs.7,12,663/-. As per the case of the respondent, this is the disputed amount. According to the respondent, as mentioned earlier vide in his reply notice, regarding the disputed cheques, we find entry dated 05.07.2011 and 08.08.2011. According to the respondent,

this statement of account has been suppressed, while filing the cases by the petitioner in STC.No.214/11 & STC.No.205/11. According to the respondent, these two cheques were already given discharge and accounted. But, later, they have been forged and presented for encashment. So, according to him, forgery and other offences are clearly made out.

16. Moreover, from the discussion made above and as per the statement of accounts and as well as from the reply notice sent by the respondent, it is seen that outstanding amount is liable to be settled. For which, as mentioned earlier, the respondent has sought accommodation of the petitioner for settlement through negotiation across table and also requested time for settling the accounts.

17. Para 1 & 2 of the reply notice reads as under:-

> *"2.7.Hence, it is important to mention that your client had attempted to utilize unlawfully certain cheque leafs for which payments have already been received by your client. In any event, the Statement of Account is not admitted by my client as true as certain amounts already sent by my client has not been given credit in the said Statement of Accounts. After finalising the statement of accounts with your client, my client would be able to find out the true due from my client to your client. In any event, the outstanding referred to in paragraph 4 of the notice under reply has to be checked by permitting my client to sit with your client's representative and decide about the actual due amount from my client.*
>
> *8.My client requests your client that your client may sit with my client and sort out the issues involved inclusive of non replacement of the defective machines and thereby arrived at account details smoothly. If after considering the above materials, if any amount is found payable due from my client to your client, my client is prepared to pay the same if your client is willing to grant a time of two years for the payment of the entire arrears found in accordance with the account settling arraignment between my client and your client as stated in the notice."*

18. Having admitted those things, the present criminal prosecution is launched. In the facts and circumstances of the case, I am of the considered view that it is nothing, but, clear abuse of process of the Court. As made as one of the grounds for which, the criminal complaint can be quashed as per the judgment of the Hon'ble Supreme Court in **State of Haryana Vs Bajanlal 1992 SCC Crl 426.**

19. In the result, complaint filed by the respondent against the petitioner in C.C.No.73 of 2017, on the file of the learned Judicial Magistrate No.I, Thiruchirapalli, stands quashed and accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

DSS

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Judicial Magistrate No.I,
Thiruchirapalli.

+1 CC to Mr.T.ANTONY ARUL RAJ, Advocate (SR-6614[F] dated 23/02/2021)

+1 CC to Mr.N.VIJAYARAJAN, Advocate (SR-6595[F] dated 23/02/2021)

Order made in
Crl.O.P.(MD)No.5201 of 2017 and
Crl.MP(MD)No.3670 of 2017
22.02.2021

SSS(CO)
SRS (12/03/2021) 7P : 4C