



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 01.02.2021

DATE ON WHICH PRONOUNCED : 26.02.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P. (MD)No.5440 of 2017

and

Crl.MP(MD)No.3812 of 2017

P.Sathiya ... Petitioner/Accused

Vs.

P.Manikandan ... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 Criminal Procedure Code, to call for the records in S.T.C.No.868 of 2016 on the file of the Fast Track Court No.I, (Judicial Magistrate Level No.II), Madurai, quash the same.

For Petitioner : Mr.A.Jeyarama Chandran

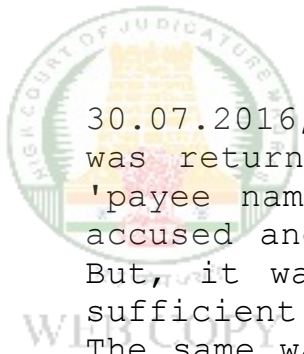
For Respondent : Mr.M.Krishnaveni

ORDER

This Criminal Original Petition has been filed to quash the proceedings in S.T.C.No.868 of 2016 on the file of the Fast Track Court No.I, (Judicial Magistrate Level No.II), Madurai.

2.The brief facts of the case is as follows:-

The complainant namely, Manikandan, who is the respondent herein and the accused, who is the petitioner herein are friends and in course of friendship, the accused approached the complainant for hand loan of Rs.4.80 lakhs for his business development and to meet out her small debts. On 30.06.2016, the amount was paid by the complainant and towards discharge of the liability, the accused issued a post dated cheque bearing No.307434, drawn on State Bank of India, P & T Nagar, Anaiyur, Madurai -17, for an amount of Rs.4.80 lakhs. The accused promised that the amount will be made available on the date of presentation of the cheque. The same was presented for collection on



30.07.2016, in the State Bank of India, C.T.O Complex, Madurai. It was returned on 02.08.2016 with a bank return memo stating that 'payee name requires initial'. The initial was obtained from the accused and again, it was presented for collection on 05.08.2016. But, it was returned on 06.08.2016 with a memo stating that 'insufficient fund'. So, a notice of demand was issued on 12.08.2016. The same was received by the accused on 13.08.2016, but, there was no reply and no payment. With these allegations, the complainant filed a private complaint before the Trial Court for punishing the accused for having committed offence punishable under Sections 138 & 142 of Negotiable Instruments Act and 420 of IPC.

3. Challenging the private complaint, the accused before this Court on the ground of factual aspects. According to him, he was working in a Company called 'Kolanjiappar Trade Testing Centre' which is a Man Power Agency. Jeyalakshmi is the wife of the respondent herein. The respondent and his wife Jeyalakshmi were running a Man Power Agency called 'H.R Solution' at Viragupettai, Madurai. In course of time, the said Jeyalakshmi offered that she would introduce the persons, those who are seeking job in abroad and if the petitioner is able to do the needful, both of them can take commission, after paying the necessary fees. The petitioner agreed for the arrangements. In the mean time, the petitioner came to know that one Daniel was arranging person to send abroad, believing his words, Rs.2.25 lakhs was deposited in the account of the Daniel by collecting money from 8 persons, who were introduced by Jeyalakshmi.

4. But, later, it came to know that the said Daniel conducted a fake Company. This fact was informed by the petitioner to the respondent and his wife namely Jeyalakshmi. On 10.06.2016, they obtained a blank cheque bearing No.307434, drawn on the State Bank of India, C.T.O Complex, Madurai, and also obtained the petitioner's signature in blank papers affixed with revenue stamp. The petitioner lodged a complaint with the Commissioner of Police, Madurai, on 20.07.2016 against the above said Daniel. The above said Jeyalakshmi also filed a complaint against the petitioner before the Commissioner of Police, Madurai.

5. In course of enquiry conducted by the Sub Inspector of Police, both the parties agreed that the petitioner must pay Rs.50,000/-, which was also paid. The remaining amount of Rs.50,000/- was to be paid by the petitioner. At that time, the respondent and his wife returned the signed blank cheque bearing No.307434. But, later, it came to know that they have given only a Xerox copy of the original cheque. By misusing the original cheque, the present complaint has been filed, in respect of which, the petitioner gave a complaint to the Deputy Commissioner of Police, (Crime) on 30.03.2017. But, there was no action. The



complaint filed by the respondent is abuse of process of the Court and seeks quashment of the same.

6. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

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7. This Criminal Original Petition is filed mainly on the ground that the petitioner did not receive any loan amount as detailed in the complaint. But, it was a business transactions by which, she as well as the respondent and his wife namely, Jeyalakshmi were victims of cheating, committed by one Daniel, who was running a fake Man Power Agency. But, these facts cannot be gone into this petition. It is for the petitioner to prove the same, before the Trial Court.

8. Next contention is that, compromise reached between the parties before the Sub Inspector of Police, Anna Nagar, Crime Branch, Madurai, she agreed to settle the amount of Rs.1 lakh and the same was also paid to the respondent and her wife and at that time instead of returning the original blank cheque issued by the petitioner, they have returned only Xerox copy of the original cheque. This is also a factual aspect, which is required to be proved, before the Trial Court.

9. The learned counsel for the petitioner would draw the attention of this Court with regard to the alleged letter given by the petitioner to the Sub Inspector of Police, Crime Branch, Anna Nagar, Madurai, and she has mentioned in the letter that she received the empty cheques bearing Nos.30743411, 6250020361, 0044401131. There is an endorsement made by the Sub Inspector of Police dated 02.09.2016 that compromise has been made between the parties and Rs.1 lakh was settled. Same was received by the wife of the respondent and so, further action was dropped.

10. Even though, the cheque number mentioned in the letter dated 30.10.2016, tallies with that of the cheque mentioned in the complaint, those facts have to be proved only during the trial. The documents produced by the petitioner are not admitted by the respondent. Only the documents, which are impeccable in nature can be taken into account, while considering the petition under Section 482 of Cr.P.C. But, the document filed by the petitioner to quash the complaint are not admitted documents. They have to be proved, as per law, before the Trial Court. The complaint cannot be quashed at the initial stage. So, the petition is liable to be dismissed, accordingly dismissed.

11. The Trial Court shall dispose of the case as per law without being influenced by any of the observations of this Court. It is also made clear that the observations are made only for the



limited purpose of disposing this petition. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

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Sub Assistant Registrar (CS)

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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 Level No.II
Fast Track Court No.I,
Madurai.

+1 CC to M/S.M.KRISHNAVENI, Advocate (SR-8183[F] dated 02/03/2021)

Crl.O.P.(MD)No.5440 of 2017
and
Crl.MP(MD)No.3812 of 2017
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KM (19.03.2021) 4P 3C