IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	26.09.2022
Pronounced on	27.10.2022

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

Crl.O.P.No.1221 of 2021
and
Crl.MP.Nos.746 & 747 of 2021

G.Revathi ... Petitioner/Accused

Vs.

P.K.Ganeshwar,
Proprietor of Shri Ganesa Textiles,
rep. by his Power of Attorney,
Ramesh. ... Respondent/Complainant

Prayer:- This Criminal Revision Petition filed under Section 482 of Cr.P.C., praying to call for records in STC.No.337 of 2020 pending on the file of the learned Judicial Magistrate, Palladam, quash all further proceedings in the said case in STC.No.337 of 2020.

For Petitioner : Mr.R.Baskar

For Respondent : Mr. Rajarathinam

for Mr.A.Thiayarajan

O R D E R

This Criminal Original Petition has been preferred to call for the records in S.T.C.No.337 of 2020 on the file of the learned Judicial Magistrate, Palladam and quash the same.

2.The petitioner is the accused in a private complaint filed by the respondent against the petitioner for the offence under Section 138 of the Negotiable Instrument Act.

3.The learned counsel for the petitioner submitted that the impugned cheque on which the complaint has been filed by the respondent was barred by limitation and hence, it is not for any debt or legally enforceable liability as defined under Section 138 of the Negotiable Instrument Act; as per Section 25(3) of the Indian Contract Act, the agreement without consideration is void unless it is written and registered; on the date of issuance of the cheque, there was no legally enforceable debt or liability or drawing the cheque cannot amount to an acknowledgement of time barred debt; it has been held in number of cases that the complainant cannot take any action under Section 138 of the Negotiable Instrument Act unless there is any legally enforceable debt; even according to the case of the complainant for the loan advanced on 19.12.2013 the cheque is alleged to have been issued on 24.06.2020 after a period of 6 ½ years; so it is clearly a time barred debt and it is not legally enforceable.

3.1. In respect of the above contention the learned counsel for the petitioner submitted the following judgements:

Sl. No	Citations submitted by the petitioner's counsel	Reported in
1	M.P.Farook Vs. K.Sasikumar	judgement made in A.No.4088 of 2017 & A.No.750 of 2017 in CS.No.75 of 2017 and Crl.OP.No.13939 & 13940 of 2016 & 15581 of 2017 dated16.12.2019
2	M.Danabal Vs.R.SenthilRajan	Order made in Crl.RC.No.492 of 2014 dated 12.09.2019
3	K.Kumaravel Vs. R.P.Rathinam	2010(3) MWN (Cr.)DCC 121
4	Sama Dharman Proprietor and another Vs.S.Natarajan	2012 SCC Online Mad 2776
5	S.Natarajan Vs. Sama Dharman	2014(9) Scale 3
6	Rajendra Finance Vs. S.Alosius Thairiyanatham	2005(2) R.C.R.(criminal) 382
7	S.Kamatchi & others Vs.M/s.Arkaa Medicament	2009(3) MWN (Cr.)DCC 31

Sl. No	Citations submitted by the petitioner's counsel	Reported in
8	Sujies Benefits Fund Ltd Vs. H.Sultan	2016 ACD 195 : 2016 ALL MR(Cri) 222
9	Joseph and Devassia	2001 Cri LJ 24
10	Sasseriyil Joseph Vs. Devassia	S.L.P.(Cri)No.1785/2001
11	Neptune Inflatables Ltd Vs. Industrial Venture Captial Ltd	2019 SCC OnLine Mad 16642
12	Jage Ram Karan Singh & another Vs. State & another	2019 SCC OnLine Del 9486
13	The Bidar Urban Cooperative, Bank Ltd, Hyderabad Vs. Girsh	Judgement of the Hon'ble High Court Karnataka in Crl.A.No.200057/2016 dated 17.12.2020
14	M/s.National Agricultural Cooperative Marketing Federation of India (NAFED) Vs. M/s.Disha Impex (PVT) Ltd., and another.	Judgement of the Hon'ble High Court Karnataka in Crl.A.No.1072 of 2013 dated 06.01.2021
15	Shree Daneshwari Traders Vs. Sanjay Jain and another	(2019) 16 SCC 83
16	J.C.Budhraja Vs. Chairman, Orissa Mining Corp. Ltd and another	(2008) 2 SCC 444
17	A.V.Murthy Vs. B.S.Nagabasavanna	(2002) 2 SCC 642
18	A.R.M.Nizmathuallah Vs. Vaduganathan	2007 (5) CTC 488
19	P.Mohanraj & others Vs. Shah Brothers Ispat Pvt Ltd	2021(1) MWN (Cr.) DCC 97(SC)

4. Per Contra, the learned counsel for the respondent submitted that the signature of the executant is not disputed; there is a presumption in favour of the holder of the cheque that the cheque was issued for legally enforceable debt and the fact whether the cheque was issued for a legally enforceable debt or not is a question of fact and that can be proved only during the trial; despite there are mixed questions of law and fact the petitioner has filed this petition in a prematured manner and to quash the same; the Hon'ble Supreme Court has held clearly that under Section 25 (3) of the Act a promise made in writing and authorized to pay wholly or in part of time barred debt, it is a valid contract; hence, it is a cheque which is construed as a promise in writing and hence, it is not a case which should be quashed without putting the accused for trial.

4.1. In respect of the above contention the learned counsel for the respondent submitted the following judgements:

Sl. No	Citations submitted by the respondent's counsel	Reported in
1	S.Natarajan Vs. Sama Dharman And another	(2021) 6 SCC 413
2	S.Karthikeyan Vs. M/s.Vetrivel Finance	order of this Court in Crl.OP.No.10078 of 2022 dated 13.07.2022
3	N.Nadhagopal and others Vs. K.Chezhiyan and another	order of this Court in Crl.OP.Nos.16125, 16127 & 16129 of 2020 dated 17.06.2022
4	M.Jayanthi Vs. K.R.Meenakshi and another	unreported order of the Hon'ble Supreme Court in Crl.A.No.1817 of 2019
5	V.Mohaned Khader Vs. T.Venugopal	Order of Madurai Bench of this Court made in A.S.(MD) No.134 of 2021 dated 07.04.2022

5. The only contention of the petitioner is that the respondent has filed the complaint against the petitioner for the offence under Section 138 of the Negotiable Instrument Act for a time barred debt, which is not legally enforceable. In this regard, the attention of this Court was drawn to the judgement of this Court held in the case of ***Sama Dharman Proprietor and another Vs.S.Natarajan*** reported in ***2012 SCC OnLine Mad 2776***. In the said judgement, it is held as under:

> **"***21. The learned counsel appearing for the petitioners has drawn the attention of the Court to the following decisions:*
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> *(a) In (2001) MLJ (Crl)115 Kerala (Joseph Vs. Devassia), it is held that "in the case the complainant admitted that the loan was advanced to the accused in January 1988 and the cheque was issued in February 1991. Thus, by the time the cheque was issued, the debt was barred by limitation. Since there was no valid acknowledgement of the liability within the period of limitation. It is clear from Sec.138 of the Negotiable Instruments Act that in order to attract the penal provisions in the bouncing of a cheque in Chapter XVII, it is essential that the dishonoured cheque should have been issued in discharge of wholly on the part of any debt or other liability of the drawer to the payee. The explanation to Sec.138 defines the express 'debt as liability' as a legally enforceable debt in other liability. It cannot be said that a*

time barred debt is a legally enforceable debt. It cannot be said that a time barred debt and it is dishonoured the accused cannot be convicted under Sec.138 of the Act."

(b) In 2009 (3) MWN (Cr.) DCC 31 (S.Kamatchi & Others Vs. M/s.Arkaa Medicament, through its Managing Director, Mr.A.Dhanasekaran and another) this Court has held that "time barred debt cannot be construed as a legally enforceable debt."

22. From the conjoint reading of the decisions referred to supra, it is easily discernible that for the purpose of invoking Section 138 r/w section 142 of the Negotiable Instruments Act, 1881, the cheque in question must be issued in respect of legally enforceable debt or other liability."

6. But the said judgement was overruled by the Hon'ble Supreme Court and the judgement of the Hon'ble Supreme Court is cited by the learned counsel for the respondent reported in **(2021) 6 SCC 413 [S.Natarajan Vs. Sama Dharman and another].** In the said judgement, it is held as under:

" 7. In our opinion, the High Court erred in quashing the complaint on the ground that the debt or liability was barred by limitation and, therefore, there was no legally enforceable debt or

liability against the accused. The case before the High Court was not of such a nature which could have persuaded the High Court to draw such a definite conclusion at this stage. Whether the debt was time barred or not can be decided only after the evidence is adduced, it being a mixed question of law and fact.

8. In this connection, we may usefully refer to a judgment of this Court in A.V. Murthy v. B.S. Nagabasavanna1 where the accused had alleged that the cheque issued by him in favour of the complainant in respect of sum advanced to the accused by the complainant four years ago was dishonoured by the bank for the 1 (2002) 2 SCC 642 reasons "account closed". The Magistrate had issued summons to the accused. The Sessions Court quashed the proceedings on the ground that the alleged debt was barred by limitation at the time of issuance of cheque and, therefore, there was no legally enforceable debt or liability against the accused under the Explanation to Section 138 of the NI Act and, therefore, the complaint was not maintainable. While dealing with the challenge to this order, this Court observed that under Section 118 of the NI Act, there is a presumption that until the contrary is proved, every negotiable instrument was drawn for consideration. This Court further observed that Section 139 of the NI Act specifically notes that it shall be presumed unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 of the NI Act for discharge, in whole or in part, of any debt or other liability. This Court further observed that under sub-Section (3) of Section 25 of the Contract Act, a promise, made in writing and signed by the person to be *charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits, is a valid contract. Referring to the facts before it, this Court observed that the complainant therein had submitted his balance sheet, prepared for every year subsequent to the loan advanced by the complainant and had shown the amount as deposits from friends. This Court noticed that the relevant balance sheet is also produced in the Court. This Court observed that if the amount borrowed by the accused therein is shown in the balance sheet, it may amount to acknowledgement and the creditor might have a fresh period of limitation from the date on which the acknowledgement was made. After highlighting further facts of the case, this Court held that at this stage of proceedings, to say that the cheque drawn by the accused was in respect of a debt or liability, which was not legally enforceable, was clearly illegal and erroneous. In the circumstances, this Court set aside the order passed by the High Court upholding the Sessions Court's order quashing the entire proceedings on the ground that the debt or liability is barred by limitation and, hence, the complaint was not maintainable. It is, therefore, clear that the contention urged by the appellant herein can be examined only during trial since it involves examination of facts."*

7. In the case of ***A.V. Murthy Vs. B.S.Nagabasavanna*** reported in ***(2002) 2 SCC 642*****,** the Hon'ble Supreme Court had made a distinction between a debt which is completely barred by law or by virtue of any other inherent illegality. By citing the above judgement it is claimed by the learned counsel for the respondent that time barred debt cannot be categorized as a debt completely barred by law, in view of the possibility for its revival and making it legally enforceable. It is relevant to extract para No. 6 of the above judgement which reads as follows:

> *"6. This is not a case where the cheque was drawn in respect of a debt or liability, which was completely barred from being enforced under law. If for example, the cheque was drawn in respect of a debt or liability payable under a wagering contract, it could have been said that that debt or liability is not legally enforceable as it is a claim, which is prohibited under law. This case is not a case of that type. But we are certain that at this stage of the proceedings, to say that the cheque drawn by the respondent was in respect of a debt or liability, which was not legally enforceable, was clearly illegal and erroneous. "*

8. The learned counsel for the petitioner cited the judgement of the Full Bench of the Hon'ble Supreme Court rendered in the case of ***P.Mohanraj & others Vs. Shah Brothers Ispat Pvt. Ltd., [****reported in* ***2021 (1) MWN (Cr.) DCC97*** (SC)] in which stoppage of proceedings under Sections 138 & 141 of the Negotiable Instrument Act in view of Section 14 of the Insolvency and Bankruptcy Code, 2016 has been dealt. In the said judgement the Hon'ble Supreme Court has held that a real object of the penal provision in Negotiable Instruments Act is not to penalise the wrong doer but to compensate the victim. But this argument should be made before the trial Court in order to persuade it to award compensation instead of punishment, if the Court deems fit.

9. In view of the initial presumption in favour of the petitioner and also in the background of the judgement of the Hon'ble Supreme Court in the case of ***S.Natarajan Vs. Sama Dharman and another*** **[**reported in ***(2021) 6 SCC 413*****],** which reversed the quashing the case by the High Court on the point of acknowledgement of time for barred debt, I feel this is a matter which should be proved before the trial Court. The learned counsel for the petitioner submitted that the initial burden is upon the complainant to prove that the cheque was issued for legally enforceable debt or liability.

10. When the execution of the cheque is not denied, there is an initial presumption that the cheque has been issued for a legally enforceable debt or liability. If the issuance of the cheque itself is an acknowledgement or promise for the time barred debt, the petitioner cannot take a defence of unenforceable debt. The above facts can be looked into only after analysing all the facts about the understanding between the parties before issuing the impugned cheques.

11. On perusal of the complaint, there are averments about the communications made between the parties with regard to their acknowledgement of the debt and on all other facts. These essential facts can be proved only during the trial. It is not the submission of the petitioner that the cheque was issued for any illegal contract like gambling or any other illegal transactions. Since the respondent has stated that the cheque was issued for the existing liability in the background of the facts stated by him, I feel it is appropriate to subject the parties under trial.

Accordingly, this Criminal Original Petition is **dismissed** and the order of the learned Judicial Magistrate, Palladam in STC.No.337 of 2020 is confirmed. Consequently, connected miscellaneous petitions are also dismissed.

27.10.2022

Index : Yes/No
Internet : Yes/No
Speaking/ Non Speaking.
jrs

R.N.MANJULA, J.

jrs

To
The Judicial Magistrate, Palladam

Crl.O.P.No.1221 of 2021
and
Crl.MP.Nos.746 & 747 of 2021

29.10.2022