IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2022

CORAM

THE HON'BLE MR. JUSTICE G.CHANDRASEKHARAN

CRL.O.P.NO.22219 OF 2016
AND
CRL.M.P.NO.10319 OF 2016

V. Prabu Doss
.. Petitioner/
Accused

Vs.

Shankar
.. Respondent/
Complainant

Prayer:

Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for all the records in C.C.No.1385 of 2015 on the file of VIII Metropolitan Magistrate, George Town, Chennai and quash the same.

For Petitioner: Mr. K. Mukund Rao

For Respondent : Mr. V.M. Venkatraman

O R D E R

This petition is filed to call for the records in C.C.No.1385 of 2015 on the file of VIII Metropolitan Magistrate Court, George Town, Chennai and quash the same.

2. C.C.No.1385/2015 was filed under Section 200 of Cr.P.C., r/w 138(B) and Section 142 of Negotiable Instruments Act. The respondent/complainant had filed the above said C.C.No.1385/2015 against the petitioner/accused.

3. The case is that the petitioner/accused had approached the respondent and his wife Sasikala and borrowed a sum of Rs.2 lakhs on 15.02.2010 and executed a registered mortgage deed on 15.03.2012. Again petitioner approached complainant and his wife and borrowed a sum of Rs.2 lakhs on 15.03.2012 and executed

a registered mortgage deed along with his wife and son. Once again, petitioner, his wife and son approached the respondent and his wife on 03.10.2012 and borrowed a sum of Rs.1,50,000/- and executed an unregistered mortgage deed in favour of respondent's wife. That apart, petitioner approached the respondent and his wife for hand loan and borrowed the following amounts:-

a. 08.12.2021 - Rs.10,000/- @ 2% interest per month
b. 22.12.2012 - Rs.10,000/- @ 2% interest per month
c. 09.01.2013 - Rs.40,000/- @ 2% interest per month
d. 18.02.2013 - Rs.1,00,000/- @ 2% interest per month
e. 13.03.2013 - Rs.50,000/- @ 2% interest per month
f. 21.08.2013 - Rs.50,000/- @ 2% interest per month

3(i). Petitioner totally borrowed a sum of Rs.8,10,000/- and he was not regularly paying the interest. The interest to be paid was Rs.16,200/- per month and he lastly paid interest in December'2014. Thereafter, he did not pay the interest. For which statutory notice under Section 69(2)(a) of Transfer of Property Act was issued to the petitioner, his wife and his son to pay the principal and interest. It was received by the petitioner. He was asked to pay a sum of Rs.1,31,800/- as interest and principal of Rs.8,10,000/-. After receiving the notice, petitioner approached the respondent on 19.07.2015 and sought time to settle the amount and issued a cheque dated 10.07.2015 vide Cheque No.093879 drawn on Syndicate Bank, AVC Plaza, George Town Branch for a sum of Rs.5,31,800/-. in the name of the complainant as part payment of the loan amount of Rs.8,10,000/- to be paid to the complainant's wife Sasikala. The cheque was presented for encashment on 20.07.2015 and it was dishonoured on 21.07.2015 and returned with an endorsement "Payment Stopped by drawer". A statutory legal notice dated 31.07.2015 was issued calling upon the petitioner to pay the cheque amount. The notice was received by the petitioner on 01.08.2015. However, he failed to pay the amount. Therefore, this case.

4. Learned counsel for the petitioner mainly canvassed on the claim that in the legal notice as well as the complaint, it is claimed by the respondent that the cheque was issued by the petitioner for making part payment of the loan amount of Rs.8,10,000/- to be paid to the respondent's wife Sasikala. His submission is that in the said circumstances, it is not open to the respondent to file the case. Case ought to have been filed by the wife of the respondent Sasikala. It is further submitted that in the complaint it is alleged that the petitioner approached respondent and his wife Sasikala and borrowed a sum of Rs.2 lakhs. Whereas, in the legal notice in para 2, it was alleged that the petitioner approached respondent's wife

Sasikala and borrowed a sum of Rs.2 lakhs. These are vital discrepancies available in the notice and in the complaint. Therefore, technically respondent cannot maintain this case against the petitioner and therefore, it is liable to be quashed.

5. In response, the learned counsel for the respondent submitted that the cheque can be issued for a legally enforceable debt or other liability. It is not necessary that the cheque amount to be paid to the drawee. In support of his submission, he pressed into service the judgment in Devendra Kumar Rai Vs. Ram Gopal Rai and Another reported in 1999 Crl.L.J 1349. Reading of this judgment shows that Section 138 does not require that the cheque is to be issued to the person only from whom the liability was incurred.

> "6. A careful reading of the works of the Section indicate that it relates to issuance and dishonour of a cheque issued for payment of any amount of money to another person for discharge of any debt or other liability. The law does not require that the cheque is to be issued to that person only from whom the liability was incurred. Here is a case where, according to the complaint, the sum was due to the father of the complainant and the complainant, on behalf of his father, had been insisting for repayment. According to the complaint, the cheque was issued in the name of the complainant only for discharging the debt due to his father. This cannot be treated as a case not covered by Section 138 of the Negotiable Instruments Act."

6. Coming to the facts of the case, it is specifically alleged in the complaint that there are atleast two registered mortgage loan transactions and one unregistered mortgage loan transaction. The mortgage deeds registered as well as unregistered had been executed by the petitioner individually and along with his wife and his son in favour of respondent's wife Sasikala. Apart from these mortgage loan transactions, there are six loan transactions between the petitioner, respondent and his wife based on promissory notes. It is alleged in the complaint that the petitioner had borrowed money from the respondent and his wife on the basis of six promissory notes on various dates. All these loans put together comes to a total of Rs.8,10,000/-. Now the cheque concerned is for only Rs.5,31,800/- representing the part payment of the total loan amount of Rs.8,10,000/- and accumulated interest.

6(i). It is alleged that petitioner had also borrowed loan from the respondent on the basis of promissory note. Cheque is issued in favour of the respondent. It is true that it claimed in the complaint that the cheque was issued to the respondent towards part payment of loan amount to be paid to respondent's wife Sasikala. As per the judgment reported above, this course is permissible. Petitioner is also liable to pay money to the respondent. Disputed facts are required to be examined through the evidence of petitioner/respondent and this Court cannot go into this now. In this view of the matter, this Court find there are enough materials to proceed further with the trial of the case and this petition is dismissed.

7. The trial Court without being influenced by any of the observation made in this order may proceed to dispose the case in accordance with law. This petition is dismissed. Consequently, connected miscellaneous petition is closed.

8. The learned VIII Metropolitan Magistrate, George Town, Chennai is directed to expedite the trial and dispose of this case, within a period of three months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

AT

To

The VIII Metropolitan Magistrate, George Town, Chennai.

+1cc to Mr. K. Mukund Rao, Advocate, S.R.No.14326
+1cc to Mr. V.M. Venkatraman, Advocate, S.R.No.13594

Crl.O.P.No.22219 of 2016 and
Crl.M.P.No.10319 of 2016

AK(CO)
PM/23/03/2022