IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.29742 of 2015
and
M.P.No.1 of 2015

A.H.Shabudin ... Petitioner/Accused

Vs.

Praveen Chordia (SHUF),
Rep. By its Karta Praveen Chordia ... Respondent

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C, prayed to call for records and quash the complaint in C.C.No.5367 of 2013 on the file of learned Judicial Metropolitan Magistrate, Fast Track-1, Egmore.

For Petitioner : No appearance
For Respondent : No appearance

ORDER

This petition has been filed to quash the complaint in C.C.No.5367 of 2013 on the file of learned Judicial Metropolitan Magistrate, Fast Track-1, Egmore.

2. The petitioner/accused in C.C.No.5367 of 2013, who is facing trial before the learned Judicial Metropolitan Magistrate, Fast Track-1, Egmore on the private complaint filed by the respondent under Section 138 of Negotiable Instrument Act, has filed this quash petition.

3. There is no representation for the petitioner as well as the respondent.

4. This Court had earlier directed to issue notice to the petitioner and the respondent. The respondent received the notice as early as on 17.12.2021. Thereafter, there is no representation on behalf of the respondent either in person or through his counsel. Pendency of the case from the year 2015 without any progress would create further accumulation and serves no purpose.

5. This Court proposed to look into the grounds in the copy of the complaint and dispose of the case on its own merits.

6. On a perusal of the complaint it is seen that the respondent is a financier, who entered into a hypothecation agreement with his customers for the four wheelers used to extend loan. The petitioner approached the respondent through one Murugan and obtained financial assistance for his business purpose. At that time, he entered into a hypothecation agreement raising loan on his car namely, FORD ENDEAVOUR bearing Registration No.TN 09 AC 7491 and on 29.07.2011 obtained a loan for a sum of Rs.5 lakhs and agreed to repay the same in 24 monthly instalments at Rs.27,500/- p.m. for nine months and Rs.27,000/- for the remaining period. The petitioner/accused paid nine installments properly and thereafter, failed to pay the remaining installments. The instalment amount have to be paid regularly on 29th every month. Last payment being done on 05.06.2012 and for the remaining installments, he was due to a sum of Rs.4,11,000/- in

principal and default interest of Rs.93,733/-. In total, he was due to pay Rs.5,04,773/-. Thereafter in the month of July 2013, the petitioner approached the respondent and agreed to settle the dues by paying Rs.5 lakhs and issued a cheque for a sum of Rs.5 lakhs in favour of the de-facto complainant drawn on State Bank of India, Tindivanam Taluk Branch bearing No.128220 dated 23.07.2013 and promised that the cheque would be honoured. Thereafter, the complainant had presented the cheque with his banker, HDFC Bank, Triplicane Branch, which was returned for the reason "Funds Insufficient". Following the same, statutory notice was issued on 16.08.2013. The petitioner failed to receive the same and the statutory notice was returned as “Not claimed”. Thereafter following the statutory provisions complaint lodged. Immediately, the petitioner approached this Court and filed this petition.

7. The contention of the petitioner is that the petitioner issued 29 cheques in blank, unfilled and duly signed by him as required by the

respondent. The petitioner had taken financial assistance of Rs.5 lakhs for purchasing FORD ENDEAVOUR bearing Registration No.TN 09 AQ 7491. The agreement was that a sum of Rs.27,500/- to be paid for 9 months and Rs.27,000/- to be paid for the remaining 15 months. The petitioner had been paying the amount by cheque and also directly by cash. For any default, the respondent have the right to resolve the dispute by way of Arbitration envisaged in Article 22 of the hypothecation agreement. Further, the respondent is having right to repossess the vehicle. On the contrary, having possession of the blank cheque, the respondent had filled up the amount of Rs.5 lakhs and presented the cheque. A statutory notice was sent in such a way and the same was returned. On the behind of the petitioner, the case has been filed. Hence, the present quash petition has been filed.

8. The contention of the respondent is that the petitioner not disputed his signature and handing over of the cheques. Further, the petitioner admits that there is some liability to be paid to the respondent. The petitioner

availing the loan is also admitted. He is only taking a ground on technicalities. Further, the points raised by the petitioner are factual and disputed, which are to be decided during trial. The petitioner admits his signature in the cheque. He is only disputing the quantum of the cheque amount which is necessarily to be decided during trial and not in the quash petition.

9. In view of the same, this Court is not inclined to entertain this petition. Accordingly, this Criminal Original Petition is dismissed.

10. Since C.C.No.5367 of 2013 has been kept pending from the year 2013 onwards, the trial Court is directed to conclude the trial within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

13.10.2022

Index : Yes / No
Internet : Yes/No
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To

1. The Judicial Metropolitan Magistrate,
   Fast Track-1, Egmore.

2. The Public Prosecutor,
   High Court, Madras

M.NIRMAL KUMAR, J.

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