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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2022

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.22550 of 2016
and
Crl.M.P.No.3624 of 2017

P. Manivannan

.. Petitioner

Vs.

M/s. Arul Construction,
Proprietor, Mrs. Deepika Vinohar
Old No.42/65, P.S. Sivasamy Salai,
Mylapore, Chennai - 600 004.
New No.25/69, 3rd Street,
Railway Colony, Aminjikarai,
Chennai - 600 029,
Represented by its Power Agent,
Mr.D.Udhayakumar

.. Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the entire records in pursuant to C.C.No.174 of 2015 on the file of the Court of XVIII Metropolitan Magistrate, Saidapet, Chennai-15 and quash the same.

For Petitioner : Mr. T.P. Prabakaran

For Respondent : Ms. J.Sumathi
for Ms. D. Selvakumari

O R D E R

Crl.O.P.No.22550/2016 is filed to call for the records in C.C.No.174/2015 on the file of XVIII Metropolitan Magistrate, Saidapet, Chennai and quash the same.

2. C.C.No.174/2005 was filed for the offence under Section 138 of Negotiable Instruments Act, by the respondent, against the petitioner.

3. The allegations made against the petitioner in the complaint is that the respondent is a proprietorship concern engaged in construction business. There was an agreement between respondent and petitioner on 09.05.2011 to purchase the



flat in Arul Paradise at Flat No.C-1, second floor, No.4, Anantha Raman Street, Radha Nagar Main Road, Chromepet, Chennai-600 044. Petitioner issued a cheque for a sum of Rs.5,50,000/- to discharge the liabilities to the respondent vide cheque No.066693 dated 28.11.2012 drawn on Indian Overseas Bank, Gemini Circle Branch at No.297, Cathedral Road, Chennai - 600 086. On the request of the petitioner, the respondent presented the cheque on 23.02.2013 through his Bankers, HDFC Bank Ltd., Radhakrishnan Salai, Mylapore Branch, Chennai - 600 004. This cheque was returned unpaid stating "payment stopped" by return memo dated 23.02.2013. It was intimated by the respondent on the same day. Respondent caused a legal notice dated 05.03.2013, through his client, demanding the payment for the above said cheque amount. Petitioner received the notice and sent a reply dated 22.03.2013. Petitioner failed to pay the entire cheque amount within 15 days as mentioned in the notice. Therefore, this complaint was filed. Now the petitioner filed this quash petition to quash the complaint.

4. Learned counsel for the petitioner submitted that the petitioner had made the entire payment of Rs.50,20,000/- as per the following details:-

SI. No.	Date	Particulars of Payment	Amount paid	Remarks
1.	09.05.2011	Paid by the petitioner towards own contribution for purchase of flat	Rs.10,20,000/-	Receipt No.578
2.	20.06.2011	Payment released to the respondent by Indian Overseas Bank (housing loan)	Rs.15,00,000/-	
3.	25.06.2011	Payment released to the respondent by Indian Overseas Bank (housing loan)	Rs.10,00,000/-	
4.	22.09.2011	Payment released to the respondent by Indian Overseas Bank (housing loan)	Rs.5,00,000/-	
5.	11.02.2012	Payment released to the respondent by Indian Overseas Bank (housing loan)	Rs.5,00,000/-	



10. It is seen from the submission of the learned counsel appearing for the parties, there is no dispute that there was an agreement between parties with regard to purchase of the flat. Respondent claims that petitioner has to pay a sum of Rs.5,50,000/- to the respondent. Respondent admits all the payments except the amount covered by the impugned cheque i.e., Rs.5,50,000/-. Respondent claims that though the receipt was issued for Rs.10,20,000/- claiming that it was paid through cash on 09.05.2011, in reality, petitioner paid only Rs.4,70,000/- in cash and issued cheque for Rs.5,50,000/-. This receipt was issued only to help the petitioner to raise the loan from the bank.

11. Thus, it is clear from the submission of the learned counsel appearing for the parties that there is a dispute with regard to the payment of Rs.5,50,000/-. This is a disputed fact and evidence of the parties is required to find out the truth or falsity of the case propounded by both the parties. This Court cannot go into the disputed of question of fact while deciding this petition.

12. Admittedly, the cheque was returned for the reason that payment was stopped by the petitioner. It is not known as to whether there was sufficient amount in the bank account of the petitioner or not at the time, when the cheque was returned. Evidence is required to elicit this fact. Therefore, this Court finds that this is not a fit case for quashing. In view of the same, this petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

AT

To

1.The XVIII Metropolitan Magistrate,
Saidapet.

+1cc to Mr.T.P.Prabakaran, Advocate, S.R.No.12441
+1cc to M/s.D.Selvakumari, Advocate, S.R.No.12957

CrI.O.P.No.22550 of 2016 and
CrI.M.P.No.3624 of 2017

MT(CO)
SB(25/03/2022)