



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.02.2022

PRONOUNCED ON : 15.03.2022

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

CRL.O.P.No.22551 of 2016

and

Crl.M.P.Nos.3625 & 3626 of 2017

Sampathrajan

... Petitioner/Accused

Vs.

M/s.Arul Construction,
Proprietor, Mrs.Deepika Vinohar
represented by its Power Agent,
Mr.D.Udhayakumar

... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the entire records in pursuant to C.C.No.175 of 2015 pending on the file of the Court of XVIII Metropolitan Magistrate, Saidapet, Chennai and quash the same.

For Petitioner : Mr. T.P. Prabakaran

For Respondent : Ms. J. Sumathi for
Mr. D. Selvakumar

O R D E R

This petition is filed to call for the records in C.C.No.175 of 2015, on the file of XVIII Metropolitan Magistrate Saidapet, Chennai and to quash the same.

2. The respondent/complainant filed the complaint for the offence under Section 138 of Negotiable Instruments Act under Section 200 of Cr.P.C.

3. It is alleged in the complaint that the petitioner/accused and the respondent/complainant had entered into an agreement on 13.05.2011, to purchase a Flat in Arul



Paradise at Flat No.C1, Second Floor, No.4, Anantharaman Street, Radha Nagar Main Road, Chrompet, Chennai. Petitioner issued a cheque for a sum of Rs.7,50,000/- to discharge the liabilities to the respondent vide Cheque No.200105 dated 28.11.2012 drawn on ICICI Bank, T.Nagar. Respondent requested the petitioner several times for the payment of the aforesaid amount and at the request of the petitioner, the cheque was presented for the payment on 23.02.2013 at HDFC Bank Limited, Radhakrishnan Salai, Mylapore Branch, Chennai. The cheque was returned unpaid for the reason "Funds Insufficient". A legal notice dated 05.03.2013 was sent to the petitioner demanding the payment of the cheque amount. Petitioner received a notice on 13.03.2013 and sent a reply dated 22.03.2013. Petitioner failed to pay the cheque amount within 15 days as mentioned in the notice. Therefore, this complaint.

4. This complaint was taken on file by the learned XVIII Metropolitan Magistrate, Saidapet, Chennai. Challenging the taking cognizance of this case, this Crl.O.P., is filed for quashing the case in C.C.No.175 of 2015.

5. Learned counsel for the petitioner submitted that the purchase price for the Flat at M/s.Arul Paradise bearing Flat No.C1 was fixed as Rs.50,57,500/-, which is inclusive of cost of construction of Rs.45,37,000/- and cost of undivided share of land of Rs.5,20,000/-. Petitioner made the following payments from his contribution for the purchase of the flat.

a) on 07.05.2011	-	Rs.5,07,500/-
b) on 13.05.2011	-	Rs.7,50,000/-
c) on 17.05.2011	-	Rs.2,00,000/-
d) on 26.05.2011	-	Rs.2,00,000/-
e) on 02.09.2011	-	Rs.1,07,500/-

Total	-	Rs.17,65,000/-

5(i). Apart from these payments, petitioner availed the housing loan from Indian Overseas Bank and paid the following amount to the respondent.

a) on 20.06.2011	-	Rs.15,00,000/-
b) on 25.06.2011	-	Rs.10,00,000/-
c) on 22.09.2011	-	Rs. 5,00,000/-
d) on 04.02.2012	-	Rs. 5,00,000/-
e) on 16.08.2012	-	Rs. 3,00,000/-

Total	-	Rs.38,00,000/-



5(ii) Petitioner totally paid a sum of Rs.55,65,000/-, however, the cost of the Flat is only Rs.50,57,000/-. Petitioner paid an excess amount of Rs.5,07,500/-. He sent a notice to the respondent demanding excess payment, but the respondent did not return the excess payment. Petitioner has filed a suit in O.S.No.2003 of 2013 on the file of XVIII Assistant City Civil Court, Chennai. Possession of the Flat was handed over to the petitioner on 14.08.2012 and thereafter, as per the direction of the petitioner, his bank paid the final 3% installment to the respondent. There is no need or necessity for issuing a cheque for Rs.7,50,000/- on 28.11.2012. There is absolutely no cause of action, no legally enforceable debt or liability to warrant the institution of this case. Therefore, this case has to be quashed.

6. Per contra, the learned counsel for the respondent submitted that certain payments alleged by the petitioner is disputed by the respondent. Petitioner is liable to pay Rs.7,50,000/- and only to discharge the liability, petitioner issued the impugned cheque and the cheque was returned for the reason that there was no sufficient fund. Prima-facie case is made out for prosecuting the petitioner for the offence under Section 138 of Negotiable Instruments Act. Therefore, the learned counsel for the respondent prayed for dismissal of this petition.

7. Considered the rival submission and perused the records.

8. From the submission of the learned counsel appearing for the parties shows it is clear that there is no dispute with regard to the fact that the impugned cheque belongs to the petitioner and it was returned for the reason that there was no sufficient funds in the account. Petitioner claims that he had paid excess amount of Rs.5,07,500/- than the cost of Flat of Rs.50,57,500/-. There was absolutely no reason for him to issue cheque on 28.11.2012, when he had taken possession of the Flat on 14.08.2012. It is not known why the petitioner paid an excess amount of Rs.5,07,500/- to the respondent. The respondent disputes the claim of payment made by the petitioner and it is the case of the respondent that there is a sum of Rs.7,50,000/- still due from the petitioner to the respondent. Only to discharge that liability, the impugned cheque was given and it was returned as funds insufficient.

9. Thus, it is clear that there is a dispute with regard to the actual payment made by the petitioner. The petitioner though filed a memo of payment of details, the payment details should be corroborated with necessary oral and documentary



evidence, especially when it is disputed by the respondent. The suit in O.S.No.2003 of 2013 was filed seeking Rs.10 lakhs towards the damages suffered by the petitioner on account of incomplete work carried out by the respondent in Flat No.C1 at Arul Paradise. There was no prayer for the refund of excess amount alleged to have been paid by the petitioner to the respondent. Thus, it is clearly evident that there is a dispute with regard to the amount alleged to have been paid by the petitioner to the respondent. As already said, the disputed fact is required to be decided only after the examination of relevant witnesses and by producing the relevant documents. The disputed facts cannot be gone into in the petition filed under Section 482 of Cr.P.C.

10. Therefore, this criminal original petition is dismissed for giving opportunities to the parties to raise all the issues before the trial Court for its adjudication on the basis of oral and documentary evidence to be produced. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

//True copy//

Sub Assistant Registrar

AT

To

1. The XVIII Metropolitan Magistrate,
Saidapet, Chennai.
2. - do-Through Chief Judicial Magistrate,
Egmore, Chennai.

+1cc to Mr.T.P. Prabakaran, Advocate SR.No.17723

CRL.O.P.No.22551 of 2016 and
Crl.M.P.Nos.3625 & 3626 of 2017

MT(CO)
GMY(01/04/2022)