IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.06.2022	Pronounced on : 15.06.2022

Coram::

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Criminal Original Petition No.2714 of 2019
& Crl.M.P.No.1733 of 2019

1. Reeoh Business India Limited,
No.12, Saraswathi Garden,
GandhiGrammam, Vadakkuthu Panchayath,
Gandhi Nagar (Post),Kurinijipadi Taluk,
Cuddalore - 607 308.

2. Gomathi @ Gomathi Aruna, (Age 56),
Managing Director,
Reeoh Business India Limited,
No.12, Saraswathi Garden,
GandhiGrammam, Vadakkuthu Panchayath,
Gandhi Nagar (Post),Kurinijipadi Taluk,
Cuddalore - 607 308.

3. Shunmugha Sundharam (Age 65),
Director,
Reeoh Business India Limited,
No.12, Saraswathi Garden,
GandhiGrammam, Vadakkuthu Panchayath,
Gandhi Nagar (Post),Kurinijipadi Taluk,
Cuddalore - 607 308.

4. Nayagam, (Age 35),
Director,
Reeoh Business India Limited,
No.12, Saraswathi Garden,
GandhiGrammam, Vadakkuthu Panchayath,
Gandhi Nagar (Post),Kurinijipadi Taluk,
Cuddalore - 607 308. ... Petitioners

/versus/

Mathiazhagan,
S/o.Annavi,
No.A-4, Pearl Street,
Block-16, Neyveli Township,
Kurinijipadi Taluk,
Cuddalore – 607 308. ... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records and quash the C.C.No.105 of 2018 on the file of the District Munsif and Judicial Magistrate, Neyveli.

For Petitioners : Mr.K.Elangoo

For Respondent : Mr.S.Vinoth Kumar

O R D E R

This petition is filed to quash a private complaint in C.C.No.105 of 2018 on the file of District Munsif-cum-Judicial Magistrate, Neyveli, arising out of private complaint under Section 138 of Negotiable Instruments Act, 1881.

2. The 1st petitioner is the Company by name M/s.Reeoh Business India Limited. The petitioners 2 to 4 are Managing Director and Directors of the said company respectively. Alleging that, for the business purposes of the 1st petitioner Company, the 2nd petitioner borrowed a sum of Rs.17,00,000/- from the respondent on 16.02.2018 promising to repay the same within two months. The 1st petitioner Company is managed through 2nd, 3rd and 4th petitioners. As a security, a post-dated cheque of the 1st petitioner Company for a sum of Rs.17,00,000/- was handed over to the respondent. When the said cheque dated 17.04.2018 was presented for collection, same was returned with an endorsement “Account blocked”. After causing statutory notice under Section 138 of Negotiable Instruments Act, a complaint was lodged alleging that the cheque was issued by the 2nd accused, who is the authorized signatory of the 1st accused and same was issued with knowledge and connivance of the accused 3 & 4, who are Directors of the 1st accused Company. The above said complaint is sought to be quashed under Section 482 of Cr.P.C on the ground that, on receipt of the statutory notice, a detailed reply dated 31.05.2018, denying the liability and issuance of the cheque.

3. In the quash petition, it is pleaded that the Trial Court without applying its mind and unmindful of the fact which has been brought out in the reply notice by categorically stating that, the subject cheque lost by the 2nd petitioner herein on 21.03.2017 along with bunch of other documents like passbook and PAN cards., while he kept the cheque book, passbook and other documents in his vehicle, parked near Madras Hotel, K.K.Nagar Main Road, Trichy. A complaint was given to the K.K.Nagar, Trichy Police on 22.03.2017 and C.S.R.No.78 of 2017

was issued. On the same day, the Branch Manager of the Bank was intimated about the missing of the cheque leaves bearing Nos.159628 to 159665 and requested not to encourage those 34 cheques and stop payments to prevent misuse by a founder of the lost cheque. Relying upon these two documents and the fact that, the allegation in the complaint that, the subject cheque was handed over to the respondent/Complainant on 16.02.2018 with date as 17.04.2018 is forfetching. The complaint is contrary to the truth and documents which form part of the records maintained by the Police and bank.

4. The Learned Counsel appearing for the petitioners would specifically state that, to attract any penal provisions of Negotiable Instruments Act, the cheques ought to have been given by the person who maintains the account to discharge any legally enforceable debt. As far as this case is concerned, the petitioners have not issued the cheques to the respondent-complainant and there is no legally enforceable debt or any transaction between the petitioners and the respondent. The subject cheque along with PAN cards was lost as early as 21.03.2017 in the course of transit and same was brought to the notice of the police as well as concern bank on 22.03.2017. The police, after making all efforts issued Non-Traceable Certificate dated 06.04.2017 and based on which, duplicate for the lost PAN cards were also obtained. While so, the respondent/complainant, who managed to lay his hands on the blank cheques, had filled it up for his benefit to make unlawful gain and had misused the same by presenting an imaginary complaint under Section 138 of Negotiable Instruments Act. In the complaint, there is no whisper under what circumstances and the manner in which Rs.17,00,000/- was paid to the 2nd petitioner. The respondent/complainant, who is an ordinary employee of NLC, who does not have any wherewithal to lend loan of Rs.17,00,000/-. Contrarily, the 1st petitioner/Company and petitioners are financially affluent person. Hence, sought to quash the complaint on the ground that, cheques were not issued for any enforceable debt and was not returned for insufficiency of funds or exceed arrangement, but for the reason "account blocked" which is not a ground for prosecuting under Section 138 of Negotiable Instruments Act.

5. Per contra, the Learned Counsel for the respondent would submit that the petitioners who admits the signature in the cheques cannot claim any defence which are not sustainable to quash the complaint. Prima facie case is made out by the respondent through the complaint and the correspondence between the parties through their Lawyer. Having borrowed the money, the 1st petitioner Company through 2nd petitioner has issued the

cheques with promise to repay the amount within two months. Hence the untenable plea taken by the petitioners, who are accused in C.C.No.105/2018 are to be rejected.

6. Heard the Learned Counsel for the petitioners and the Learned Counsel for the respondent. Records perused.

7. Admittedly, the subject cheque was returned on the ground of "account blocked" and not for insufficiency of funds or exceeding arrangements. It is also established beyond doubt that the 2nd petitioner has given a complaint as early as 22.03.2017 that the subject cheque along with 33 cheques, passbook and PAN cards, which were kept in the vehicles were found missing. The police has issued C.S.R receipt and same was also intimated to the bank on the same day and therefore, the bank has blocked the account on instruction of the account holder. While, this has happened during the month of March 2017, the respondent herein in the complaint claims that the cheque bearing No.159628 was handed over to him on 17.04.2018 with the promise that, if the cheque is presented two months thereafter, it will be honoured and the said cheque was issued as a security for the loan availed. In the complaint, it is not stated the manner in which the loan amount of Rs.17,00,000/- given to the 2nd petitioner. The complaint conspicuously absent about the avocation of the complainant to infer his capacity to advance loan of Rs.17,00,000/-. Though, the said fact may not be of much relevance in the normal circumstances, when in the reply to the statutory notice, it is averred that the complainant is a retired staff of NLC have no wherewithal to advance Rs.17,00,000/-, in the complaint, it is expected the source or mode of payment narrated. Further the petitioners case is that the cheque was lost and complaint given to police almost a year before its presentation.

8. On considering the submissions, this Court is of the view that, when there is no material to show that the cheque was available with the petitioners on the date on which it is alleged to have been handed over to the respondent and when there is no evidence to show the money transaction between the petitioners and the respondent, on receipt of the reply notice, the complainant ought to have made out a specific averment in the complaint how and when he came in possession of the cheque. The reason for getting the possession of the cheque on 17.04.2018 without any averment about these facts even after specific denial of liability and issuance of the cheque, this Court holds that the complaint ought to be quashed since the ingredients of Section 138 of Negotiable Instrument Act not been made out in the complaint.

9. Accordingly, the Criminal Original Petition is allowed. As a result, the complaint is quashed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

bsm

To,

The District Munsif cum Judicial Magistrate,
Neyveli.

+1cc to Mr.K.Elango, Advocate, S.R.No.35467

Crl.O.P.No.2714 of 2019

PL(CO)
UMA(27/06/2022)