IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2022

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.NO.2643 OF 2020
AND
CRL.M.P.NOS.1589 & 1590 OF 2020

S.Rajkamal ... Petitioner

-Vs-

The IDBI Bank Limited,
Rep. by its Branch Head,
No.3A, Karthikeyan Road,
(Opp. To St.Joseph's Convent)
Arni, Tiruvannamalai District. ... Respondent

PRAYER:-

Criminal Original petition filed under Section 482 of the Code of Criminal Procedure, to call for the entire records in pursuant to the criminal proceedings in S.T.C.No.388 of 2019 pending on the file of Court of Judicial Magistrate, Arani, Tiruvannamalai District and quash the same.

For Petitioner : Mr.T.P.Prabakaran

For Respondent : Mr.S.Parthasarathy

ORDER

This Criminal Original Petition has been filed, to quash the criminal proceedings in S.T.C.No.388 of 2019, pending on the file of the learned Judicial Magistrate, Arani, Tiruvannamalai District.

2. Heard both side and perused the materials available on record.

3. The petitioner herein is arrayed as an accused in the complaint lodged by the respondent for the offence under Section 138 of Negotiable Instruments Act, 1881.

4. The case of the respondent is that the petitioner has approached the respondent/Bank for Warehouse Receipts loan and the loan was disbursed the loan to a tune of Rs.50,00,000/- as per the letter of intent, dated 13.10.2016 in Loan Account No. 1379671100030092. The petitioner herein executed a Promissory Note dated 14.10.2016 in favour of the respondent/Bank for the loan, which was borrowed with interest at 10.01% p.a. The petitioner also executed an agreement for payment with terms and conditions. Accordingly, the petitioner has to re-pay all the outstanding amounts under the facility on or before 28.08.2017.

5. Further, the Demand Promissory Note dated 14.10.2016 and facility agreement dated 14.10.2016 are filed herewith and the same may be executed by the petitioner herein. The petitioner also issued post-dated cheque on condition that, whenever the petitioner committed default, the cheque may be presented for collection to realize the loan amount. The petitioner failed in re-payment of loan and as such, the respondent/Bank presented cheque for a sum of Rs.54,28,530/- for collection and the same was returned dishonoured for the reason "Funds Insufficient". Therefore, the respondent/Bank issued statutory notice to the petitioner and initiated proceedings for the offence under Section 138 of Negotiable Instruments Act.

6. The learned counsel for the petitioner submitted that the respondent/Bank simultaneously proceeded before the Debt Recovery Tribunal-II, Chennai, to realize the loan amount which was borrowed by the petitioner. He further submitted that whenever the goods which are pledged, the same can be brought under auction to realise the loan amount. Therefore, the present proceedings of the respondent/Bank cannot be sustained as against the petitioner for the offence under Section 138 of Negotiable Instruments Act.

7. The learned counsel appearing for the respondent submitted that the Ware House Receipt was pledged for borrowing the loan from the respondent/Bank in offering the liquidity support as per the rules relating to, borrowal of the loan amount.

8. In view of the default committed by the petitioner, the respondent has issued public auction notice on 04.03.2018, for conducting auction on 13.03.2018 for sale of Door Dal. The auction was conducted and intimated to the Collateral Manager to release the commodities to the successful bidder on 16.03.2018. The Collateral Manager has not obliged to the request of the respondent and in turn informed the respondent that there is no stock containing Door Dal available as given in the Commodity Arrival Report, dated 29.09.2016 and 16.12.2016. There is outstanding due to the tune of Rs.54,45,282/- at the time of

presenting the cheque. The petitioner also duly entered into an agreement in which he has accepted that, whenever the petitioner committed default in payment of loan, the post-dated cheque may be presented for collection to realise the loan amount. Accordingly, the respondent presented the cheque which was issued by the petitioner to realise the loan amount and the same was dishonoured for the reason "funds insufficient".

9. On a perusal of the records, it reveals that, though the respondent initiated proceedings before the Debt Recovery Tribunal-II in O.A.No.623 of 2018, the said proceedings are pending as of today and the present proceedings are initiated for the offence under Section 138 of Negotiable Instruments Act. Further, the goods pledged by the petitioner have been brought for auction. However, the petitioner has also misrepresented the quantum. All the grounds raised by the petitioner, are question of facts and it cannot be entertained by this court in this petition filed under Section 482 of Cr.P.C. Therefore, there is no ground to quash the entire proceedings initiated against the petitioner and this petition has to be dismissed. However, the petitioner is at liberty to raise all the grounds before the Trial Court during the Trial.

10. Accordingly, this Criminal Original Petition stands dismissed with above liberty.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ata/nti

To

1. The Judicial Magistrate Court,
   Arani, Tiruvannamalai District.

2. The Public Prosecutor,
   High Court, Madras.

+1cc to Mr.S.Parthasarathy, Advocate, S.R.No.34979
+1cc to Mr.T.P.Prabakaran, Advocate, S.R.No.35187

CRL.O.P.NO.2643 OF 2020

RR(CO)
PBS/12/07/2022