



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2022

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.O.P.No.3171 of 2019
and
Crl.M.P.No.2071 of 2019

K.Raghupathy

... Petitioner / Accused

Versus

K.Devarajan

... Respondent / Complainant

Prayer: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code to call for the records and quash the S.T.C.No.339 of 2018 pending on the file of the learned Judicial Magistrate, Tambaram.

For Petitioner : Mr.K.P.Sathish Kumar

For Respondent : Mr.A.Nagarajan

ORDER

This Criminal Original Petition has been filed seeking to quash the S.T.C.No.339 of 2018 on the file of the learned Judicial Magistrate, Tambaram.

2. The learned Counsel for the Petitioner submitted his arguments. As per the submissions made by the learned counsel for the petitioner, this petition is filed to quash the criminal complaint preferred by the respondent/defacto complainant before the learned Judicial Magistrate, Tambaram under Section 138 of the Negotiable Instruments Act.

3. Further, the learned counsel for the petitioner submitted that there was a loan transaction for Rs.6,50,000/- between the parties, for which, Rs.2,00,000/- was the interest. Together the petitioner had repaid Rs.8,50,000/- by way of installments. At the time of borrowing the loan, the petitioner had handed over four cheques. After repayment, the petitioner demanded return of cheques, but, the respondent/defacto complainant delayed.



Therefore, the petitioner had approached the Commissioner of Police and preferred a complaint on 06.11.2017. Subsequently, the petitioner had approached the Sankar Nagar Police Station and preferred a complaint on 08.11.2017. Based on the complaint, CSR was issued, but, FIR was not registered. Therefore, the petitioner was forced to file a Criminal Original Petition in CrI.O.P.No.27055 of 2017, in which, this Court had directed the Sankar Nagar Police to register an FIR. In spite of the direction of this Court in CrI.O.P.No.27055 of 2017, Sankar Nagar Police had not register an FIR. Therefore, the petitioner was forced to move a Contempt Petition before the High Court. Only after filing of the Contempt Petition, the Sankar Nagar Police had registered the case in Crime No.826 of 2018 on 26.09.2018.

4. When matters stood at that stage, the respondent had issued a notice for offence under Section 138 of Negotiable Instruments Act as if the petitioner had committed offence attracting provisions of Section 138 of Negotiable Instruments Act. The learned counsel for the petitioner submits that the petitioner on receipt of the notice under Section 138 of Negotiable Instruments Act had sent reply refuting the averments in the notice.

5. After the receipt of the reply notice, the petitioner had sent rejoinder denying the averments in the reply notice and not having considered the reply, the respondent had filed a criminal complaint under Section 138 of Negotiable Instruments Act before the learned Judicial Magistrate, Tambaram. On receipt of the summons from the Court of the learned Judicial Magistrate, Tambaram, the petitioner had filed protest petition and the same is pending before the learned Judicial Magistrate, Tambaram. Further, the learned counsel for the petitioner submits that the notice itself is defective. The learned counsel for the petitioner invited the attention of this Court to the fact that the cheque was returned for "signature differs".

6. The respondent/defacto complainant had suppressed the fact that on an earlier occasion, the cheque was returned for difference in signature. But, in number of times if the same cheque is presented, it will be returned for the same remarks only. Suppressing the earlier presentation of the cheque and after limitation period, the notice had been issued and not taking consideration of these legal points, the learned Judicial Magistrate had taken cognizance of the criminal complaint. Therefore, the petitioner had filed protest petition and this petition seeking to quash the criminal complaint.



7. The learned Counsel for the Respondent/defacto complainant submits that he had filed separate typed set of papers, wherein he had invited the attention of this Court that on the basis of the direction in CrI.O.P.No.27055 of 2017, an FIR was registered by the Sankar Nagar Police and on investigation based on the FIR, the Investigation Officer came to understand that it was a civil dispute involving loan transaction and the amount borrowed as loan, for which, a part of the amount had been repaid had been considered and the balance amount is disputed. All these things are considered by the Investigation Officer and therefore, he had dropped the further proceedings in the investigation as "Mistake of Fact" (M.F), which is available in page No.4 of the typed set of papers filed by the respondent. Further, the learned counsel for the respondent invited the attention of this Court to the promissory note executed by the petitioner herein for an amount of Rs.18,50,000/- and it is not Rs.8,50,000/- as claimed by the learned counsel for the petitioner.

8. The learned counsel for the Respondent further submitted that in the statutory notice as well as in the private complaint, the amount paid by way of installments by the petitioner had been clearly stated and considered that he had paid a sum of Rs.8,50,000/-. The cheque that was presented and bounced was for Rs.10,00,000/- and it was presented after the petitioner had asked the defacto complainant to present it. Therefore, the notice was issued to the petitioner with an ulterior motive that the complaint will be lodged by the respondent, had preferred a complaint before the Commissioner of Police, Sankar Nagar Police and also filed Criminal Original Petition in CrI.O.P.No.27055 of 2017. Even though FIR was registered on the basis of the direction given by the High Court in CrI.O.P.No.27055 of 2017, from the investigation, the Investigation Officer was able to collect the materials that this was a civil dispute involving loan transaction. Therefore, he had closed the same as "Mistake of Fact". The rest of the submissions of the learned counsel for the petitioner is subject to adducing evidence and by way of cross examination before the learned Judicial Magistrate and that cannot be considered while disposing of a petition of this nature under Section 482 of Cr.P.C. Therefore, he seeks to dismiss this Criminal Original Petition.

9. On consideration of the rival submissions and on perusal of the typed set of papers filed by both parties, it is found that the submissions of the learned counsel of the petitioner is to be considered as valuable defence before the trial before the learned Judicial Magistrate. The submissions of the learned



counsel for the respondent is found acceptable and reasonable in the light of the guidelines issued by the Hon'ble Supreme Court to High Courts in exercising power under Section 482 of Cr.P.C. in the case of State of Haryana Vs. Bhajan Lal.

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10. In the light of the above, the learned Judicial Magistrate is directed to proceed with the trial and dispose of the same within a reasonable period of three months from the date of receipt of a copy of this order or the date of uploading of this order on the website of the High Court.

11. With the above direction, this Criminal Original Petition is dismissed. Consequently, connected Criminal Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate,
Tambaram.
2. The Public Prosecutor,
Madras High Court,
Chennai.

+1cc to Mr.K.P.Sathish Kumar, Advocate, S.R.No.25876
+1cc to Mr.Ramesh Kumar, Advocate, S.R.No.25653

Cr1.O.P.No.3171 of 2019
and
Cr1.M.P.No.2071 of 2019

AJS[co]
NSK 02/05/2022