



WEB COPY

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.4519 of 2020

and

CrI.MP.Nos.2592 & 2593 of 2020

Thanigaivel Adiyapatham

... Petitioner

Vs.

Andhra Bank,
Mount Road Branch,
No.95, New No.137, Anna Salai,
Represented by its Senior Manager,
G.S.Rajagopalan.

... Respondent

PRAYER:Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.1092 of 2019 on the file of the learned Metropolitan Magistrate, FTC-I, Allikulam, Chennai and quash the same.

For Petitioner : Mr.K.Jagannathan

For Respondent : No appearance

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.1092 of 2019 on the file of the learned Metropolitan Magistrate, FTC-I, Allikulam, Chennai initiated for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The petitioner is the sole accused and the complaint lodged by the respondent.

2. The course of the complaint is that the respondent/complainant sanctioned housing loan facilities of Rs.13,70,000/- to the accused through sanction letter No.1606/53/HLP/141 dated 17.01.2013. On receipt of the entire loan amount the petitioner executed loan and security documents



in favour of the respondent and provide loan facility in order to repay entire loan amount by way of EMI. The petitioner issued cheque for a sum of Rs.16,750/- dated 19.07.2018. The respondent presently cheque for commercial and the same was returned for a reason 'Funds Insufficient'. Thereafter, the respondent caused statutory notice under Section 138 of the Negotiable Instruments Act, 1881 and lodged complaint.

3. Learned counsel for the petitioner would submit that the petitioner is working in a Private Company and while being so the respondent bank along with another bank advertised that they are providing lower housing loan ranging from 12 lakhs to 20 lakhs promoted by M/s.New Chennai Township Pvt. Ltd., Further the respondent also offered lower interest and on the home loan compared to the other banks. Therefore, the petitioner approached the respondent bank for availing housing loan, he paid advance amount to the developer and the complainant, and further, the respondent gave a loan application to the developer and applied for a loan to a sum of Rs.13,70,000/- on 17.01.2013. On the same day, it was sanctioned and directed disbursement to the developer. The petitioner was assured that the project will be completed within a stipulated time. Thereafter the petitioner was informed that step by step of construction, a part of the amount will be disbursed to the developer. As requested by the respondent bank, the petitioner issued 12 cheques in advance for repayment of monthly EMI.

4. However the respondent bank had released the entire amount at Rs.12,37,834/- on 22.01.2013 in favour of the developer, that too even before registration of any Sale Deed in favour of the petitioner. Even after period of seven years, the project has not even started and now the respondent filed the present complaint as if the petitioner issued for the 1st monthly EMI. That apart, the statutory notice as contemplated under Section 138 of the Negotiable Instruments Act was not issued to the petitioner.

5. On perusal of complaint revealed that the respondent issued statutory notice dated 14.08.2019, thereby call upon the petitioner to pay the cheque amount. However, the said notice was returned with an endorsement 'Delivery attempted, door locked'. Whereas, the enclosures along with the complaint shows that the petitioner, as if received the legal notice and produce the acknowledgment dated 18.09.2018. Therefore, there is no proof to show that the statutory notice is duly served on the petitioner as contemplated under Section 138 of the Negotiable Instruments Act, 1881. When the notice itself was not served on the petitioner, there is no cause of action to lodge a complaint for the offence under Section 138 of the Negotiable Instruments Act, 1881.



6. Further, though the notice served on the respondent and name being printed in the cause-lists, no one has appeared by person before this Court. The learned counsel for the petitioner submitted that even before the Trial Court, no one is appearing simply the complaint is pending without any progress from the year 2018.

7. Considering the above facts and circumstances of this case, the present complaint cannot be sustained as against the petitioner and it nothing but abuse of process of law. Accordingly the Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

cda/dhk

To

1. The Metropolitan Magistrate,
Fast Track Court No.1,
Allikulam, Chennai.

+2ccs to Mr.K.Jagannathan, Advocate, S.R.No.34050

CRL.O.P.No.4519 of 2020

EV (CO)
UMA (28/06/2022)