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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.2449 of 2018

&

CRL.M.P.No.990 of 2018

N.Jeyachandran ... Petitioner/Accused
Vs.
A.Ashik Ali ... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for records and quash the private complaint filed in S.T.C.No.606 of 2017 pending on the file of Judicial Magistrate Fast Track Court No.I, Erode.

For Petitioner : Mr.Pushpakaran
For Respondent : Mr.V.Regunathan

ORDER

This Criminal Original petition has been filed to call for the records and quash the private complaint filed in S.T.C.No.606 of 2017, pending on the file of Judicial Magistrate Fast Track Court No.I, Erode.

2.This Court on 07.02.2022, in Crl.O.P.No.2449 of 2018, has passed the following order:

"This petitioner is the accused on the private complaint filed by the respondent under Section 138 of the Negotiable Instruments Act, which is pending in STC.No.606 of 2017 before the Judicial Magistrate Fast Track Court No.I, Erode.

2. The primary contention of the petitioner is that the petitioner was having leather business with the respondent. During course of business the petitioner purchased leather materials to the tune of Rs.14,50,991/-



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on 06.04.2016 by Invoice No.20. At that time, the cheque bearing No.844386 was drawn on Syndicate Bank, Ranipet Branch, Vellore dated 06.06.2016 for a sum of Rs.14,50,991/- issued. Subsequently, on 16.07.2016 the accused paid a sum of Rs.2,00,000/- through RTGS. Further on 18.07.2016 the said cheque was returned and thereafter, a fresh cheque drawn on Syndicate Bank, Ranipet Branch, Vellore on 18.05.2017 for a sum Rs.12,50,991/-. Subsequent to the issuance of the cheque, an amount of Rs.1,00,000/- was paid on 06.10.2016. Further a sum of Rs.2,00,000/- was paid on 21.12.2016 through RTGS. After deduction of these four payments the petitioner is due to pay a sum of Rs.8,50,991/-. Thereafter, the cheque amount of Rs.12,50,991/- was presented whereas the admitted liability is only Rs.8,50,991/-

3. The learned counsel for the petitioner submitted that in order to attract the offence under 138 NI Act the cheque should be drawn for discharging of any liability. The admitted liability is only Rs.8,50,991/- and the cheque impugned in the case is for a sum of Rs.12,50,991/-. Hence complaint not maintainable and prayed for quashing.

4. In view of the same, the cheque can be drawn for discharge of liability either in full or in part. In support of his contention, the learned counsel for the petitioner relied upon the decision of Angu Parameswari Textiles (P) Vs. Sri Rajam & Co. of this Court on 24.1.2021.

5. The learned counsel for the respondent submits that he seeks small accommodation to file his counter.

6. Post this matter on 14.02.2022."

3. In continuation to the order passed by this Court on 07.02.2022, in CrI.O.P.No.2449 of 2018, the primary ground taken by the petitioner is that the respondent/complainant himself admits in his complaint that a cheque bearing No.844386 dated 06.06.2016, was issued for a sum of Rs.14,50,991/-. Subsequently, some payments have been made, which have been given due credit and thereafter, now for the said amount of Rs.14,50,991/- prosecution has been launched. He further submitted that Section 138 of the Negotiable Instruments Act,



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attracts only when the cheque was issued in discharge of any liability or part liability. In this case, the liability amount has been considerably reduced and thereafter, the respondent proceeded against the petitioner with the cheque which was given earlier.

4. The learned counsel for the respondent submitted that the petitioner's contention cannot be decided in the quash application and it is a matter of fact which has to be decided during the trial. He further referred to the order of the Hon'ble Apex Court in Uttam Ram Vs. Devinder Singh Hudan & anr. reported in Indian Kanoon - <http://indiankanoon.org/doc/40466649/>. On an occasion, while dealing with a similar case, the trial Court as well as the High Court had dismissed the petition for the reason that the cheque amount was more than the amount alleged on the due date when cheque was presented, which was the point considered in paragraph 8 of the judgment. He further referred to various judgments of the Hon'ble Apex Court with regard to the discharge of the statutory presumption and referring to the judgments of Kishan Rao Vs. Shankargouda, Kumar Exports Vs. Sharma Carpets and Rangappa Vs. Sri Mohan, which had crystallized and submitted that as far as that case is concerned, the evidence of one of the primary witnesses has not been challenged by way of cross examination and likewise, handing over of the cheque has not been denied. Further, the signature is not disputed. Considering all these points, the defence is taken as though the cheque is misplaced. In that case, the Hon'ble Apex Court had set aside the order and held as follows:-

"8. Learned Trial Court dismissed the complaint for the reason that cheque amount was more than the amount alleged on the due date when cheque was presented. Therefore, the cheque cannot be said to be drawn towards discharge of whole or in part of any debt.

27. Once the agent of the respondent has admitted the settlement of due amount and in absence of any other evidence the Trial Court or the High Court could not dismiss the complaint only on account of discrepancies in the determination of the amount due or oral evidence in the amount due when the written document crystallizes the amount due for which the cheque was issued."

This case is also similar to it. The points raised by the learned counsel for the petitioner can be raised only during the trial and not to be decided in this quash application.



5. In view of the same, this Court is not inclined to entertain this Criminal Original Petition. It is made clear that the observations made in this order are only for the purpose of the disposal of the above petition and the trial Court uninfluenced by the above observations may decide the case on merits accordingly. Finding that the case is kept pending for a long time, the trial Court is directed to complete the trial within a period of three months from the date of receipt of a copy of this order. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

mpl/sli

To

Judicial Magistrate Fast Track Court No.I,
Erode.

+1cc to Mr.S.Pushpakaran, Advocate, S.R.No.10236

+1cc to Mr.V.Regunathan, Advocate, S.R.No.10187

CRL.O.P.No.2449 of 2018
&
CRL.M.P.No.990 of 2018

SVI (CO)
SU (02/03/2022)