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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 09.03.2022	PRONOUNCED ON 15.03.2022
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CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRIMINAL ORIGINAL PETITION NO.23828 OF 2019

&

CRL.M.P.NOS.12558 & 12559 OF 2019

1. Deepam Cinema,
Rep. by S.Ganesh.

2. S.Ganesh,
Son of Soundarajan.

3. M.S.Vinod Kumar,
Son of Sundaram.

...Petitioners / Accused No.1 to 3

/ Versus /

A.Dharmaraj,
Son of Ayyasamy Pillaim,
"Andal Vilas Apartment",
Opp to Mariammankoil,
Tahmmampatti Post,
Gangavalli Taluk,
Salem District.

...Respondent / Complainant

PRAYER : This Criminal Original Petition is filed under Section 482 of Cr.P.C., praying to call for the records and quash the above complaint in ***S.T.C.No.156 of 2021** filed by the respondent pending on the file of ***Judicial Magistrate, Fast Track Court, Attur, Salem.**

For Petitioners : Mr.M.M.I.Khaleel

For Respondent : Mr.V.R.Rajasekaran

O R D E R

This Criminal Original Petition is filed by the petitioners to call for the records and quash the above complaint in ***S.T.C.No.156 of 2021** filed by the respondent pending on the file of the ***Judicial Magistrate, Fast Track Court, Attur, Salem.**



2. The first petitioner is a movie producer firm represented by the second accused. The second and third accused are producers of the Movie titled "Panju Mittai". The complaint is with regard to dishonouring of cheque dated 27/12/2018 issued for Rs.25,00,000/- from the first accused account maintained at HDFC Bank, Valasarawakkam Branch Chennai. On behalf of the first accused Firm, the cheque was signed jointly by the accused 2 and 3 as its authorised signatories. Private complaint laid under Section 138 of Negotiable and Instrument Act, taken on file as ***S.T.C.No.156 of 2021** by the learned ***Judicial Magistrate, Fast Track Court, Attur, Salem**. The said complaint is sought to be quashed in the present petition filed under Section 482 of Cr.P.C .

3. The complaint leading to issuance of summons to the accused/petitioners reads as below:-

The complainant, who came to know the 2nd and 3rd petitioners through his friend T.P.Rajasekar Reddiyar gave loan of Rs.25,00,000/- to them for their pre-production expenses of the movie "Panju Mittai". On 02/01/2015, an undated cheque for Rs.25,00,000/- bearing No.000222 of first accused (Deepam Cinema) was jointly signed and issued by the accused 2 and 3, with a specific understanding that, after release of the movie, on intimation from 2nd and 3rd accused, the complainant to fill the date and present it for collection. The release of the movie got delayed and the accused 2 and 3 demanded an additional finance of Rs.10,00,000/- to complete the movie. Being entangled, the complainant arranged additional loan of Rs.10,00,000/- from the owner of "Bala Sweets and Bakery" and transferred Rs.5,00,000/- on 18/03/2015 and another Rs.5,00,000/- on 19/03/2015 totally Rs.10,00,000/- into the first accused account by way of RTGS. For these payment, the accused 2 and 3 issued HDFC Bank cheque bearing No.000223 for Rs.10,00,000/-. On receipt of this money, the accused 2 and 3 executed an agreement captioned "Opantha Pathiram" on 20/03/2015 acknowledging the receipt of Rs.35,00,000/- in total and agreed to repay it with 8.75% of the profit earned through the movie. If the movie does not earn any profit, the money borrowed alone will be repaid.

4. On 07/11/2017, a document captioned 'muchilika' was executed mentioning the loan as Rs.36,50,000/- and the issuance of two cheques mentioned above. The movie "Panju Mittai" released on 01/06/2017, but even after the release of the movie, the accused did not pay the money borrowed as promised. After exerting pressure on them, they called the complainant on 26/12/2018 and informed to present the cheques after filing the date as 27/12/2018 and present both the cheques one drawn in his favour for Rs.25,00,000/- and another drawn in favour of "Bala



Sweet and Bakers" for Rs.10,00,000/-. However, soon thereafter, called the complainant and asked him to come to Chennai and collect the money financed along with profit. Believing their words, the complainant came to Chennai, they collected the cheque drawn for Rs.10,00,000/- in the name of 'Bala Sweets and Bakery' and the document titled 'Opantha pathiram' and paid Rs.10,00,000/- through RTGS to "Bala Sweets and Bakery" and for the cheque Rs.25,00,000/-, they transferred only Rs.15,00,000/- through RTGS and told that, the said money is for the profit and to present the cheque on 03/01/2019 and encash it.

5. When the cheque presented for collection, it returned with endorsement "Payment stopped by the drawer". The intimation memo received on 04/01/2019. Statutory notice dated 21/01/2019 received by the 2nd accused on 28/01/2019. The third accused refused to receive on 30/01/2019. The accused replied through Advocate on 15/02/2019 containing false averments. Hence, the complaint under Section 142 of the Negotiable and Instrument Act, for offence under section 138 of the Act.

6. The petitioners herein in this quash petition contend that, the Court below ought not to have taken cognizance of the complaint since it lack material to prosecute under section 138 of the Negotiable and Instrument Act. They borrowed finance from the complainant/respondent for the post production expense of the movie and gave these two undated cheques as security. On 07/11/2017, by way of an undertaking, it was agreed that, the due payable to the complainant is Rs.36,50,000/-. The undated cheques (one for Rs.25,00,000/- and another for Rs.10,00,000/-) will be presented 60 days after the date of release of the film. It was agreed by the complainant that the balance amount will collect it from Mr.S.Mohan, the Director of the film or from one K.V.Ramesh. The said K.V.Ramesh is one of the witness to this undertaking. While so, the movie released on 01/06/2017 and a sum of Rs.2,00,000/- given to the complainant towards the audio sale. The film did not fetch any profit, the petitioners incurred heavy loss.

7. When the complainant insisted for repayment of the money, Mr.T.P.Rajasekar stood as mediator and negotiated between the complainant and the petitioners. On 29/12/2018, a settlement/compromise deed was entered between them and as per this deed, the complainant agreed to receive a total sum of Rs.25,00,000/- towards full and final settlement. Accordingly, Rs.10,00,000/- was transferred to the account of "Bala Sweets and Bakery", Rs.15,00,000/- was transferred into the account stood in the personal name of the complainant. On completion of the transfer of money, the complainant handed over the settlement deed and the two cheques to T.P.Rajasekar and the said Rajasekar, in turn, handed over them to the petitioners.



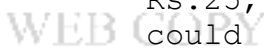
When the petitioners examined the documents, they found that the complainant retaining the original cheque bearing No.000222 issued for Rs.25,00,000/- and substituted it with colour photocopy with intention to cheat the petitioners. The complainant, thereafter went incognito and could not be reached directly or through the common friends. Therefore, the petitioners informed their bank to stop payment. In this connection, they lodged a criminal complaint against the complainant herein before Valsaravakkam Police and to counter blast the criminal case, the present complaint filed suppressing material facts.

8. The Trial Court failed to consider the statutory notice and the reply which will clearly disclose no ingredient to prosecute under section 138 of Negotiable and Instrument Act. In the absence of existing debt or liability, the complaint under Section 138 of Negotiable and Instrument Act is not maintainable. When admittedly Rs.15,00,000/- received as against the cheque amount of Rs.25,00,000/-. The cheque is not an instrument for existing debt.

9. Heard the Learned Counsel appearing for the petitioners and the Learned Counsel for the respondent.

10. The short point in this case is whether there was any existing debt or liability of Rs.25,00,000/-, for the petitioners towards the complainant, the date on which the cheque bear or on the date when it was presented, to attract Section 138 of the Negotiable and Instrument Act.

11. The complainant admits in his complaint and statutory notice, that the subject cheque was given to him by the accused persons on 02/01/2015 without date. Later, there was a muchalika entered between them on 07/11/2017 and they reduced into writing regarding the undated cheques and mode of re-payment. On 28/12/2018 they met at Chennai, a sum of Rs.10,00,000/- transferred to the account of 'Bala sweets and Bakery' and this payment was for the cheque bearing No.000223 drawn in favour of 'Bala Sweets and Bakery.' The complainant also admits another sum of Rs.15,00,000/- was transferred to his account by RTGS and according to the complainant, this amount was towards the profit earned through the production of Movie "Panju Mittai". Whereas, the accused/petitioners deny it and claims that on 29/12/2018 there was settlement talk between the complainant and the petitioners in the presence of the mediator Mr.T.P.Rajasekar. The complainant after receiving a total sum of Rs.25,00,000/- by RTGS transaction, handed over the cheques and agreement. Later on verification, it was found that, out of two cheques one cheque bearing No.000222 for Rs.25,00,000/-, the complainant with an intention to cheat, had retained the original and given



12. The complainant, while admitting the receipt of Rs.25,00,000/- in total out of Rs.35,00,000/- loan, his claim could only be for the remaining Rs.10,00,000/- and not for Rs.25,00,000/-, unless he have any material evidence to show that Rs.15,00,000/- received by him through RTGS is noway connected to the cheque transaction which have a legal presumption against the drawer of the cheque.

14. When part of the cheque amount is paid prior to its presentation, then he is estopped from presenting the cheque which is for an amount over and above the liability. If he present the cheque and drawn the money, it will amount to unjust enrichment. In case, on the presentation of the cheque, it is returned for stop payment instruction, it will not attract the ingredients of section 138 of Negotiable and Instrument Act, since he is not liable to honour the cheque.

16. The complaint under section 138 of Negotiable and Instrument Act, based on a cheque given three years ago without the date, is admittedly presented on 03/01/2019. The recording of full and final settlement and execution of settlement deed dated 29/12/2018 is suppressed by the complainant. In addition to these two facts, the complainant admits the receipt of Rs.15,00,000/- towards this cheque transaction, but he says it is not towards principal but as share in the profit. If it is so, same should have been stated in the settlement deed dated 29/12/2018 when Rs.25,00,000/- (Rs.10,00,000/- + Rs.15,00,000/-) was transferred to the complainant's account. The cumulative



assessment of these facts admitted by the complainant and the documents executed by him, makes it clear that the petitioners owe no debt to the complainant on the date of presentation of the cheque much less Rs.25,00,000/-. No document of the complainant indicate that the said movie made profit or Rs.15,00,000/- paid as share in the profit and not to discharge the debt. Contrarily, the document dated 29/12/2018, where the complainant has affixed his signature, we find that the complainant had received Rs.25,00,000/- by RTGS towards full quit and settlement and recorded the same.

17. In the light of the above fact, the complaint in ***S.T.C.No.156 of 2021** on the file of ***Judicial Magistrate, Fast Track Court, Attur, Salem** is liable to be quashed. Accordingly, the Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-IX)

Dated : 28.03.2022

***Amended as per Order dated
28.04.2022 made in Crl.M.P.
No.5788 of 2022 in Crl.O.P.
No.23828 of 2019.**

Sd/-

Assistant Registrar (CS-IX)

Dated : 13.05.2022

//True Copy//

Sub Assistant Registrar

bsm

To

**The Judicial Magistrate,
Fast Track Court,
Attur, Salem.**

**To be
Substituted
to the Order
already
despatched on
on 04.04.2022**

+1cc to Mr.V.R.Rajasekaran, Advocate, S.R.No.17611
+1cc to Mr.M.M.I.Khaleel, Advocate, S.R.No.17705

CRL.O.P.NO.23828 OF 2019 &
CRL.M.P.NOS.12558 & 12559 OF 2019

PMK (CO)
PBS/29/03/2022
RVM(16/05/2022)