



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2022

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

Crl.O.P.No.14297 of 2017 and
Crl.M.P.No.9091 of 2017

G.S.Karthikeyan

... Petitioner

Vs

D.I.Nathan

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records and quash the pending proceedings in C.C.No.732 of 2017 filed under Section 138 of the Negotiable Instruments Act, at the threshold, initial and preliminary stage itself which is pending on the file of the learned VII Metropolitan Magistrate Court, George Town, Chennai-I.

For Petitioner : Mr.M.K.Hidayatullah

For Respondent : Mr.Shanmugakani

O R D E R

This petition has been filed to quash the charge sheet in C.C.No.732 of 2017, pending on the file of the learned VII Metropolitan Magistrate Court, George Town, Chennai-1 against the petitioner filed under Section 138 of the Negotiable Instruments Act.

2. The crux of the complaint is that the accused had issued a cheque for a sum of Rs.4,80,000/- and also another cheque for Rs.5,00,000/-. One cheque is for the handing over of the L.I.C. Policies and the other is towards legal fees. When the cheques were presented to the bank, the same were dishonored on the ground that 'required information not legible/correct'. The petitioner issued a legal notice and laid a complaint under Section 138 of the Negotiable Instruments Act which has been taken cognizance by the Court in C.C.No.732 of 2017.

3. The learned Counsel appearing for the petitioner mainly submitted that the cheque in question was never issued by the present petitioner and the accounts were closed as early as in the year 2002 and the same has been misused by the respondent.



Further, the cheque issued towards the legal fees cannot be enforced as legally enforceable debt in the eye of law and the respondent being a lawyer misused the cheques. Therefore, the same has been sought to be quashed. The learned Counsel had also placed reliance on the following judgments :

- i. V.C.Rangadurai Vs. D.Gopalan & Others reported in CDJ 1978 SC 115
- ii. G.F.Hunasikattimath Vs. State of Karnataka reported in CDJ 1990 Kar HC 482
- iii. Japahari Vs. Priya reported in 1993 (2) KLT 141
- iv. Modicements Vs. Kuchil Kumar reported in 1998 SC 442
- v. C.Manohar Vs. B.R.Poornima reported in 2004 Cr.L.J. Madras 4436

4. The learned Counsel appearing for the respondent would submit that the allegation that cheque was issued only towards legal fees cannot be decided at this stage. The allegation of the complaint clearly shows that one cheque was issued towards L.I.C. Policy and the other is for legal fees. These aspects have been clearly pleaded in the legal notice to the effect that the cheques have been given by the petitioner towards commission for the LIC policy and towards legal fees. That apart he also engaged a lawyer and paid fees to vacate the premises occupied by the tenants of the petitioner and the other factual aspects have not been pleaded in the notice. Therefore, submitted that while exercising the power under Section 482, the same cannot be decided and hence, opposed to quash the petition.

5. In the light of the above submission, the main contention of the learned Counsel for the petitioner is that as the accounts are closed in the year 2002 itself, the complaint filed by the defacto complainant is not maintainable. Though, he had placed reliance on some judgments in this regard, the law is well settled in one of the the judgment of [CDJ 1998 SC 442] wherein, the Apex Court has held that merely, the cheque was dishonored on the ground of account closed will not absolve the liability. The other judgment relied upon by the Court in the case of C.Manohar Vs. B.R.Poornima reported in 2004 Cr.L.J. Madras 4436 is arising out of the judgment of the trial Court and after considering the evidence, the Court has passed the judgment. Though the legal fees is not a debt as held by the Apex Court in the judgment of Supreme Court in the case of Modicements Vs. Kuchil Kumar reported in AIR 1998 SC 1057, the cheques in question are not issued only towards the legal fees. It is pleaded in the complaint that one of the cheques was



issued towards the L.I.C. Policy commission and the another one is for legal fees. Therefore, whether there is a legally enforceable debt or not, has to be seen only at the time of trial. Though the legal notice was replied raising disputed question of facts, the same have to be seen only at the time of evidence. The onus is only on drawer of the cheque to dislodge the legal presumption. Though, there may not be any direct evidence to dislodge the presumption, even the circumstances can be brought on record by the drawer to prove the case before the trial Court. In such view of the matter, the disputed facts cannot be gone into at this stage while deciding the petition filed under Section 482 CrI.P.C. Hence, I do not find any merits in this petition and this petition is liable to be dismissed.

7. Accordingly, this Criminal Original Petition is dismissed. The Trial Court shall expedite the trial and dispose of the case as per law on merits. Consequently, the connected miscellaneous petition is closed. The accused is directed to appear before the trial Court within two weeks from the date of receipt of a copy of this order and file an application under Section 436 of Code of Criminal Procedure. On such filing of the application, trial Court is directed to release the accused on bail on the same day on executing a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) each with two sureties. If thereafter, he absconds, a fresh FIR can be registered under Section 229 A of the Indian Penal Code.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

vrc / kbs

To

The VII Metropolitan Magistrate Court,
George Town, Chennai-I.

+4cc to Mr.K.Hidayathullah, Advocate SR.No.4973

+1cc to Mr.G.Alex benziger, Advocate SR.No.4523

CrI.O.P.No.14297 of 2017 and
CrI.M.P.No.9091 of 2017

MT (CO)
GN (17/02/2022)