IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No. 4138 of 2022

Shake Shuban ...Petitioner

Vs

Rafi Ahmed
...Respondent

Prayer : Civil Revision Petition filed under Section 115 of the C.P.C., to set aside the order of rejection passed by the Sub-ordinate Judge, Poonamallee in Un. OS SR.No. 4267 of 2022.

For Petitioner : Mr. A. Kumanaraja

ORDER

The civil revision petition has been fled challenging the un-numbered O.S.Sr.No. 4267 of 2022 on the file of the Sub Court, Poonamallee.

2. The revision petitioner filed a suit for recovery of money and the said plaint was returned on the ground that "as to how the suit could be filed against the defendant when the plaintiff himself is, guilty of offence under Section 12 of the Prevention of Corruption Act

as abettor". The suit was represented with an endorsement " In earlier return no such question was raised. If the plaintiff is guilty of any offence the prosecuting authorities going to take action. This court need not be concerned about the same. It is the defendant to defend the case and court need not rescue him. In money suit if other procedures are followed, the court has to take the case on file." The manner in which the endorsement was made while representing the suit reveals that the petitioner insisted the court to number all the suits even if certain offences in the averments are identified. Suit must be filed in consonance with the procedure contemplated under Order VII CPC. While scrutinizing the plaint filed by the plaintiff if the court finds that the suit was instituted in violation of the statutes or against the public policy or otherwise, then the court is empowered to return the plaint asking the plaintiff to clarify the same.

3. In the present case, the trial court raised a valid query regarding the maintainability of the suit since the amounts are to be recovered is in connection with giving of a bribe for securing a Government job. Suit for money is permissible only if it is presented in order and the averments in the plaint must be in consonance with the legal principles. No doubt, the plaintiff is entitled to plead the facts and such facts if does not constitute a definite cause of action

then the court is empowered to return the suit for the purpose of getting further clarification or more details or additional documents from the person, who instituted the suit.

4. In the present case, the suit was instituted for recovery of money, which was given to the defendant by the plaintiff for securing a Government job. Thus, it is a bribe money given for the purpose of getting a Government job and even in such circumstances, the suit may be entertained provided if the plaintiff has got a valid document to establish that he has given money for a particular purpose. Illegal transaction would not provide any cause of action for institution of a civil suit. Illegality at no circumstances be permitted to be converted as a legality. If persons are allowed to institute a suit to recover the bribe amount given, then the very purpose and object of the Code of Civil Procedure would be defeated. Thus, instituting a suit is permissible only if the transactions are legal and illegality cannot be a cause for institution of a suit for recovery of money.

5. For example, there are several illegal activities prevailing in our country. People are dealing with narcotic drugs in an illegal manner. If such transactions are taken by way of a civil suit for recovery of money what would be the consequences is also to be

considered by this Court while entertaining such suits filed to recover the bribe amount which is given to the other defendant. Thus illegal transaction cannot be a cause of action for institution of suit for recovery of money and the cause of action must be legal, definite and in consonance with the principles of law.

6. Even under Order VII Rule 11 sub clause (d) of the Code of Civil Procedure "where the suit appears from the statement in the plaint to be barred by any law." It is a ground for rejection of plaint. Here the bribe amount is sought to be recovered by instituting a suit and giving bribe is also an offence under the provisions of the Prevention of Corruption Act. Thus, the returning of plaint is consonance with Order VII Rule 11 Sub clause (d) of the Code of Civil Procedure.

6. In the present case, the cause of action set out by the revision petitioner reveals that a cheques were given to him by the defendant. Admittedly, the cheques were not presented before the bank for realization of money. Mere cheque would not provide a cause for the purpose of institution of a suit for recovery of money. Since the cheques became invalid on account of the expiry of the prescribed period, it was not presented by the plaintiff before the

bank. The said reason is unacceptable. Therefore, the cause of action has not been arisen and at the outset the transaction between the plaintiff and the defendant seems to be illegal and therefore the trial court has rightly returned the suit and beyond the reasons stated by the trial court, the cause of action also lacks jurisdiction and thus this Court do not find any perversity. For all these reasons, the civil revision stands dismissed. No costs.

15.12.2022

Index : Yes / No
Speaking order / Non-Speaking order
mrn

To
The Sub-ordinate Judge,
Poonamallee

S.M.SUBRAMANIAM, J.

mrn

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