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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 5/1/2022

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. No.16816 of 2017
a n d
Crl.M.P.Nos.10332 and 10333 of 2017
a n d
3093 of 2021

P.Ramasamy ... Petitioner/Accused

Vs

T. Balu ...Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the proceedings in S.T.C.No.43 of 2017, pending on the file of the learned Judicial Magistrate, Coonoor and quash the same.

For Petitioner ... Mr.G.Karthikeyan

For Respondent ... Mr.J.Saravanel

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O R D E R

This Criminal Original Petition has been filed to quash the proceedings in S.T.C.No.43 of 2017, pending on the file of the Judicial Magistrate, Coonoor, for the offence punishable under Section 138 of the Negotiable Instruments Act.

2. Brief facts which are leading to the disposal of this Criminal Original Petition is as follows:-

It is the case of the complainant that the daughter of the complainant was admitted for throat infection in the hospital from 28/9/2016 till 30/9/2016 run by the son of the accused, Muralidharan. As the treatment was not in order, she developed complications. Since the news has been spread to the public, people gathered the hospital and there was law and order problem. The Tahsildar, interfered and made some arrangement for settlement. In the settlement, Doctor was agreed to pay the



medical expenses of the defacto complainant's daughter to the tune of Rs.2,50,000/-. Accordingly, the daughter of the defacto complainant was shifted to Coimbatore Hospital. However, there was no improvement and she died on 17/11/2016.

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3. On hearing the news, public including the students and others protested to book the Doctor for criminal case and politicians also involved. At this stage, the petitioner herein agreed to undertake the expenses for a sum of Rs.12,35,383/- and gave a cheque. When the cheque was presented for encashment on 4/1/2017, the same was dishonoured on the ground "Payment stopped by drawer." After issuing the statutory notice, complaint has been filed. The same was sought to be quashed.

4. The learned counsel appearing for the petitioner vehemently submitted that the very complaint itself indicate that the cheque itself was not issued on free consent and was obtained due to coercion and hence, the same cannot be enforced in the eye of law. Therefore the same sought to be quashed.

5. The learned counsel appearing for the respondent submitted that due to poor treatment given by the son of the petitioner, the health condition of the respondent's daughter become deteriorated. Only to meet out the medical expenses of her daughter, son of the petitioner entered into an agreement. However, he has not acted on the basis of the agreement. After the death of his daughter, the accused has issued a cheque in the presence of Tahsildar and others. Therefore as long as there is an agreement between the parties and the cheque was the result of such agreement, which cannot be said that the same was issued only under coercion and the same was dishonoured and legal notice was issued. The presumption attached to the cheque under Sections 138 and 139 of the Negotiable Instruments Act clearly attracted. Whether or not the cheque was issued at coercion is a matter of evidence and the same cannot be gone into at this stage. Hence prays for dismissal of this Criminal Original Petition.

6. To substantiate his case, the learned counsel appearing for the respondent cited the following decisions:-

(i). Shiv Kumar @ Jawahar Saraf Vs. Ramavtar Agarwal ((2020) 12 Supreme Court Cases 500

(ii). M. Jaishankar and Another Vs. Sree Gokulam Chits and Finance Corporation Private Limited, rep. By its Authorised Person, Mr.P.Kaliappan (2020 SCC Online Mad - 5550)

(iii). Gimpex Private Limited Vs. Manoj Goel (2021 SCC Online SC 925).

and submitted that the defence sought to be objected in quash petition cannot be entertained as long as the statutory presumption available under Sections 138 and 139 of the Negotiable Instruments Act.



7. Much emphasis was placed on Gimpex Private Limited Vs. Manoj Goel (2021 SCC Online SC 925) to the effect that the Court cannot entertain the defence while exercising the power under Section 482 of the Code of Criminal Procedure and quash the proceedings under Section 138 of the Negotiable Instruments Act.

8. It is well settled that when the factual aspects sought to be canvassed before this Court, normally the Court would not entertain the petition filed under Section 482 of the Cr.P.C., to quash the proceedings, when the cheque is in question issued in normal circumstances, there is a contract between the parties.

9. At the same time, the very complaint itself indicate that the cheque in question is not the result of any legally enforceable debt and came in the possession of the holder due to pressure tactics to prevent the criminal prosecution at the instance of mob and political parties, who gathered in front of the hospital run by the son of the petitioner herein. The Court can very well go into the validity of the cheque and its enforceability even while exercising the power under Section 482 of Cr.P.C., and as held by the Hon'ble Apex Court in SAMPELLE SATYANARAYANA RAO Vs. INDIAN RENEWABLE ENERGY DEVELOPMENT AGENCY LTD that the Court can normally proceed against the averments of the complaint. In the defence of the accused cannot be considered at this stage. When the allegations in the complaint itself indicate that the cheque in question was not the result of free consent and is obtained out of coercion and threat, such cheque certainly is not enforceable in the eye of law.

10. It is relevant to note that the averments contained in paragraph 3 (d) and (e) of the complaint makes it clear that when the health condition of the daughter of the respondent is not improved, there were hue and cry mainly by the public. There were law and order problem, as a result, the Tahsildar interfered, and the Doctor has agreed to pay 75% of the medical expenses and he has paid Rs.2,50,000/-. Thereafter, the daughter of the defacto complainant died in Coimbatore Hospital and again there were protest by the public. The Chairman of the Municipality pacified the public. At this stage, the cheque was obtained from the accused herein, in order to avoid criminal prosecution of the son. The very allegations from the complaint indicate that there was a threat and coercion by the public and defacto complainant. Therefore, in such circumstances, at no stretch of imagination, it can be said that cheque was issued with free consent.

11. It is relevant to note that Sections 10, 13 and 14 of Indian Contract Act and the same reads as follows:-



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"10. All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

13. Consent defined - Two or more persons are said to consent when they agree upon the same thing in the same sense.

14. "Free consent" defined - Consent is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation, mistake.

12. If any cheque is obtained to prevent such criminal prosecution, it cannot be said that the cheque was issued with free consent. It is relevant to note that what was complained against is mechanical negligence which has not even established. No expert opinion was obtained to the effect that the deceased daughter was died due to medical negligence.

13. Before proceeding, expert opinion must be obtained, as per Jacob Mathew Vs. State of Punjab and Another (2005) 6 Supreme Court Cases 1. Whereas in this case, only on the assumption of the parties, there were protest made by the politicians and interested persons and made some damages to the properties also. In the absence of any proof that there was medical negligence, which resulted in the death. It cannot be said that there was a proper agreement entered into between the parties and the cheque came to be issued. Accordingly, this Court is of the view that such a cheque certainly not enforceable in law. Further, it has already indicated that it is not the case of the respondent that negligence has been proved against the Doctor.

14. In such a view of the matter, when the cheques have been obtained in a forcible manner, making a threat or damages to the property, such cheque is unenforceable by any law and is not supported by any consideration. The judgments relied upon by the learned counsel appearing for the respondent is not applicable to the facts of this case.

15. In the result, this Criminal Original Petition is allowed. S.T.C.No.43 of 2017, pending on the file of the learned Judicial Magistrate, Coonoor, is quashed. Consequently, the connected Criminal Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar



mvs.
To

1. The Judicial Magistrate, Coonoor.

2. The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.G.Karthikeyan, Advocate Sr.NO. 779

+1 cc to Mr.J.Saravanavel, Advocate Sr.NO. 849

Cr1. O.P. No.16816 of 2017

ssn(CO)

A.SK(10.02.2022)