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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11/1/2022

C O R A M

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.NO.25978 OF 2017

AND

CRL.M.P.NOS.14984 AND 14985 OF 2017

Mary Blousy

...Petitioner

Vs

T.Latha

...Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records relates to the complaint in S.T.R.No.887 of 2017 pending on the file of the learned Judicial Magistrate No.II, Karaikal and quash the same.

For petitioner : Mr.T. Sai Krishnan
for M/s. Sai

For respondent : Mr.S.Sounthar

O R D E R

This Criminal Original Petition has been filed to quash S.T.R.No.887 of 2017, pending on the file of the learned Judicial Magistrate No.II, Karaikal, for the offences punishable under Sections 138 and 142 of the Negotiable Instruments Act.

2. The crux of the allegation in the complaint shows that the petitioner has entered into an agreement for purchase of the property with the defacto complainant, on 2/5/2017 and issued a cheque for a sum of Rs.5 lakhs towards part of sale consideration, dated 26/7/2017, in favour of the complainant. When the above cheque was presented for collection, through the banker of the defacto complainant, the same was returned on 31/7/2017, with an endorsement of "Payment stopped by drawer". After issuing statutory notice, the present complaint has been lodged.

3. The learned counsel appearing for the petitioner submitted that the cheque in question was issued by the petitioner as security at the time of entering into the sale agreement dated 2/5/2017 to purchase the property from the respondent who was the Power Agent of her Principal Mrs.Shrine Banu. On the date of agreement, the petitioner paid a sum of



Rs.10 lakhs and the respondent handed over all the original documents in respect of the property. On 9/5/2017, her power was revoked by her principal and she filed a suit against the petitioner and the respondent herein for injunction not to disturb her peaceful possession and enjoyment of the said property. Therefore it clearly shows that the cheque was issued as security at the time of executing the agreement for sale and there is no legally enforceable debt for the respondent/complainant.

4. The learned counsel appearing for the respondent submitted that though there is no averments as to the nature of Power of Attorney, it is his submission that cancellation of power has not been notified, as per Section 208 of the Contract Act. Therefore, as long as the same has not been notified, the power agent is entitled to act on the basis of Power of Attorney, as the cheque issued towards the part of sale consideration. On the date of issuance of the cheque, there is legally enforceable debt. Hence submitted that whether the Power of Attorney has been cancelled or not is a matter of evidence to be proved and the same cannot be gone into at this stage and hence opposed to quash.

5. Heard the arguments advanced on either side and perused the materials available on record.

6. It is not the case that the cheque was issued as a security at the time of entering into sale agreement, to purchase the property from the respondent. It is the specific case of the complainant that the cheque issued towards sale consideration in pursuant to the sale agreement dated 2/5/2017, except contending that there is no action for sale, no where it is pleaded in the entire complaint as to the nature of the agreement whether the subject matter of the agreement was the own property of the complainant or not. Reply notice available on record makes it clear that the petitioner has sent a reply contending that he has entered into an agreement with the purchase of the property with the complainant, as the Power Agent of Principal viz. Shrine Banu. As the power was cancelled as early as 9/5/2017 and the principal has already filed a suit against the agent, she has stopped the payment. Therefore in the reply notice it is stated that the agreement entered through the Power Agent is not materialised. These facts are not disputed by the petitioner in his complaint.

7. It is relevant to note that it is not the case that the cheque is issued in support of some payment said to have been paid by the complainant or his principle. It is the specific contention that cheque was issued as a part payment of sale consideration towards the sale agreement entered into between the principal through his power agent with the defacto



complainant. When the agreement itself is not materialised and the principal appears to have cancelled the power of Attorney and agreement is not materialised as sale deed, this Court is of the view that mere non payment of any advance and cheque has been returned as stopped payment, cannot be said that there is enforceable debt between the parties. As the very agreement is not materialised and the principal has already cancelled the power agent, the power agent taking advantage of the cheque issued towards the payment of so called advance amount cannot prosecute the present petitioner for the offence punishable under Section 438 of Cr.P.C. As the very agreement is not fructified and obligations of the petitioner has also not set out in such a view of the matter, this Court is of the view that it is a fit case where the complaint has to be quashed as there is no legally enforceable debt.

8. In INDUS AIRWAYS PRIVATE LIMITED AND OTHERS VS. MAGNUM AVIATION PRIVATE LIMITED AND ANOTHER (2014) 12 SCC - 539, wherein it is held that if a cheque is issued as an advance payment for purchase of the goods and for any reason purchase order is not carried to its logical conclusion either because of its cancellation or otherwise and material or goods for which purchase order was placed is not supplied by the supplier, in our considered view the cheque cannot be said to have been drawn for an existing debt or liability. In such a view of the matter it is a fit case where the complaint has to be quashed.

9. In the result this Criminal Original Petition is allowed. S.T.R.No.887 of 2017, pending on the file of the learned Judicial Magistrate No.II, Karaikal, is quashed. Consequently, the connected Criminal Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

mvs.

To

The Judicial Magistrate No.II,
Karaikal.

+1cc to Mr.S.Soundar, Advocate Sr.No.2929
+1cc to Mr.T.Saikrishnan, Advocate Sr.No.2151

CrI.O.P.No.25978 of 2017

PCH(CO)
RVM(07/02/2022)