IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2022

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Crl.O.P.No.29405 of 2022 and
Crl.M.PNo.18020 of 2022

Thirumalai J ... Petitioner

/vs/

M/s.HDFC Bank
Having its registered office,
at "Ceebros Building"
No.110, 4th Floor Nelson Manickam Road,
Aminjikarai, Chennai – 600 029.
Rep. by its Power of attorney Holder,
Mr.Kumar ... Respondent

Prayer : Criminal Original Petition has been filed under Section 482 of Cr.P.C. to call for the records and quash the same in C.C.No.3342 of 2022 on the file of the learned XIII Metropolitan Magistrate Court at Egmore, Chennai.

For Petitioner ... Mr.D.Saikumaran

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.3342 of 2022 on the file of the learned XIII Metropolitan Magistrate Court, Egmore, Chennai.

2. The petitioner is the sole accused in a private complaint given by the respondent for the offences under Section 25 of the Payment and Settlement Systems Act, 2007.

3. The learned counsel for the petitioner submitted that not only the ECS mandate must be signed by the accused, but it should also be initiated in accordance with relevant guidelines issued by the system provider; the respondent/complainant has not placed any material on record to show that originally ECS mandate has been signed by the accused; the payment system cannot operate without authorisation; no person other than the Reserve Bank, shall commence or operate a payment system except under and in accordance with an authorisation issued by the Reserve Bank under the provisions of this Act.

4. The respondent / complaint in paragraph no. 5 of the complaint has stated that the accused has issued ECS instruction to the extent of Rs.61873.23/- on 05.02.2022 towards part payment of the outstanding liability of the loan availed by him; when the ECS instruction was presented for realisation on 05.02.2022, the same was returned unpaid by

the Bank of the accused and that was intimated to the petitioner on 05.02.2022; the payment cannot be made due to insufficient funds maintained in the petitioner's accounts.

5.The transaction has been done only at the instruction of the petitioner. Only because of insufficient funds, the amount cannot be realised by the respondent. The petitioner now stands on a technical point that he did not sign the ECS mandates while giving instructions. Even though the petitioner states that he did not sign the ECS mandates while giving instructions, he did not deny the fact that he had availed the loan from the respondent bank. The terms of the loan would form part of the loan agreement. The very fact that the petitioner had availed the loan from the respondent itself is sufficient to initiate action against him for the offences under Section 25 of the Payment and Settlement Systems Act 2007 and the rest of the facts can be proved only at time of trial. Since the *prima facie* case has been made out against the petitioner, I do not feel it is appropriate to invoke powers of this Court under Section 482 of Cr.P.C., to quash the proceedings.

R.N.MANJULA ,J.

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6. In the result, this Criminal Original petition is dismissed. Consequently, connected miscellaneous petition is closed.

01.12.2022

Index: Yes/No
Internet: Yes/No
Speaking/Non speaking order
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