



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04/04/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P. (MD)No.3074 of 2019

and

Crl.MP (MD)Nos.1712 and 1713 of 2019

R.Balanagaiya : Petitioner/Accused
(Single)

Vs.

K.Meganathan : Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the entire records pertaining to the cases in STC No.21 of 2018 on the file of the Fast Track Court at Magisterial Level, Thanjavur, District and quash the same.

For Petitioner : Mr.S.Balaji
For Respondent : Mr.P.Venktesan

ORDER

This criminal original petition is filed seeking quashment of the case in STC No.21 of 2018 on the file of the Fast Track Court at Magisterial Level, Thanjavur, District and quash the same.

2.The case of the prosecution in brief:-

The respondent has filed a complaint under section 138 of the Negotiable Instruments Act before the trial court, which has taken cognizance in STC No.21 of 2018 with the following allegations. The accused was running a textile shop. He approached the complainant to join in the shop as a partner and also demanded Rs.26,75,500/-, the share amount for joining in the partnership firm. In pursuance of the above said demand, the complainant gave Rs.15,00,000/- in cash and the balance amount was transferred through the bank transaction. After receipt of the amount of transfer, the accused refused to admit the complainant in the partnership firm. On demand of repayment, the accused issued a cheque for the above said amount on 10/12/2017 drawn on his Bank. It was presented for payment on 19/12/2017. But it was returned with an endorsement 'to contact the drawer'. On 26/12/2017, statutory notice was given. Upon failure to respond to the notice, the private complaint was filed.



3. Seeking quashment of the same, this petition has been filed by the petitioner on the ground that the demand notice is not valid under law, since there is no record with regard to the correct date of the payment of Rs.15,00,000/- as cash and the date of transfer of the balance amount through bank transaction. So in the absence of the above said particulars, invalid date is noticed. It was purely on technical ground, this petition has been filed. In spite of repeated adjournments, there is no representation for the respondent and his name was ordered to be printed in the cause list, accordingly, it was also printed. Noting that the petitioner also continuously absent, the case was posted for dismissal on 22/02/2022. Again it was adjourned to 09/03/2022. Finding that there was no representation for the respondent also, on 09/03/2022, the petitioner appeared and the learned counsel argued the matter.

4. The learned counsel appearing for the petitioner would submit that as mentioned in the pleadings, the dates of transactions are not properly mentioned in the demand notice. So, the demand notice itself, per se not valid under law. More over, the cheques were returned not for insufficient funds, but for conduct the drawer. According to him, it does not attract the offence under section 138 of the Negotiable Instruments Act.

5. No doubt that the date of payment of the cash amount is Rs.15,00,000/- and the transfer of the balance amount is not mentioned in the complaint. But that cannot be taken into account at this stage, while exercising the jurisdiction under section 482 Cr.P.C, it is a matter for trial. More over, the copy of the demand notice is not available. Only the reply notice, that has been sent by the petitioner is available, wherein it has been stated by him that the entire transactions are also disputed and even the issue of the cheque is also disputed.

6. Now whatever may be, the defence that can be taken only during the course of trial before the concerned trial court.

7. The learned counsel appearing for the petitioner argued that the disputed cheque does not belong to him. For the purpose of knowing the demand notice, copy of the entire records are called for from the trial court. The copy of the disputed cheque is available in the record, wherein we find that the date of draw is mentioned as 10/12/2017 and the cheque number is mentioned as 301428-928131.

8. It appears that all the numbers are not mentioned in the complaint. Only six digits are mentioned. It is also a matter for consideration during the course of trial. So the disputed facts, which cannot be gone by this court. So, I find absolutely no merit in this petition.



9.In the result, this criminal original petition is **dismissed**.
Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Records)

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/ /2022

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To,

The Fast Track Court at Magisterial Level,
Thanjavur.

Crl.O.P. (MD)No.3074 of 2019
04/04/2022

SB(CO)
KB(06.05.2022) 3P 2C