BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved on : 03.02.2022
Delivered on : 21.04.2022
CORAM:
THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR
Crl.O.P.(MD)No.3575 of 2019

R.Mohana Prabha,
Proprietor,
M/s.SD Enterprises ... Petitioner/Sole Accused

vs.

N.P.Arunkumar ... Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records pertains to S.T.C.No.1236 of 2018 on the file of the Judicial Magistrate No.II, Kumbakonam, and quash the same.

For Petitioner : Mr.S.Packiamuthu
for Mr.M.Thirunavukarasu
For Respondent : Mr.S.Deenadayalan
for Mr.B.Anandan

O R D E R

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records in S.T.C.No.1236 of 2018 pending on the file of the Court of the Judicial Magistrate No.II, Kumbakonam, and quash the same.

2.The petitioner is the sole accused in S.T.C.No.1236 of 2018 on the file of the Court of the Judicial Magistrate No.II, Kumbakonam.

3.The respondent/complainant has filed a private complaint under Section 200 Cr.P.C., against the petitioner for the offence under Sections 138 r/w 142 of NI Act.

4.The case of the complainant is that the complainant is running a chemical factory in the name and style of Southern Organics Firm, that the petitioner/accused was a customer and she has purchased chemicals vide 7 invoices for a sum of Rs.2,95,968/-, that the petitioner had paid a sum of Rs.37,244/- for invoice No.644, that she had also a paid a sum of Rs.50,000/- through NEFT transactions and after deducting a sum of Rs.12,756/- as per the previous accounts a sum of Rs.2,58,724/- was due by the petitioner/accused, that the petitioner has issued a cheque drawn on City Union Bank Limited, Aruppukottai branch for Rs.3,11,425/- dated 03.10.2018 towards the invoice amount and the interest therefor, that the complainant has presented the said cheque for collection on 04.10.2018 with his banker namely City Union Bank Limited, Kumbakonam Town branch, but the cheque was returned with the endorsement as 'account closed', that the complainant has sent a legal notice dated 04.10.2018 to the petitioner demanding to pay the amount covered by the cheque, that the petitioner, after receipt of the legal notice, has sent a reply notice dated 23.10.2018 with false and incorrect particulars and that since the petitioner has not chosen to pay the amount, the complainant was constrained to lodge the above complaint.

5.The learned counsel for the petitioner would submit that the cheque in question indicated in business agreement dated 25.12.2015 will itself prove that the said cheque was issued as a security, that the story created by the respondent alleging cause of action stating that the cheque was issued on 02.10.2018 is utter false and illegal, that the petitioner has sent a reply notice on 23.10.2018 clearly stating that the cheque was misused by the respondent, that since the cheque in question was issued in the year 2016, the same is barred by limitation, that the petitioner's account in City Union Bank was closed much earlier and there was no transaction in the said account, that subsequent transactions between the petitioner and the respondent and issuance and encashment of cheque through the petitioner's banker namely Canara Bank will show that the case of the respondent is not true and invented for the purpose of lodging the above complaint and that the complaint is liable to be quashed on the ground of material alteration of cheque which was given as security.

6.The learned counsel for the petitioner would further submit that the respondent is not having any legally enforceable debt as against the petitioner and that the above complaint has been lodged abusing the process of law.

7.It is pertinent to note, as rightly contended by the learned counsel for the respondent, that the petitioner/accused in his reply notice as well as in the petition has specifically admitted that the cheque in question was given to her as security.

8.In the reply notice dated 23.10.2018, the petitioner has also taken a stand that the respondent has to pay a sum of Rs.2,66,805/- to the petitioner/accused towards commission for the business done by the petitioner. The petitioner further in her reply notice has stated that due to maintain the OD account with the bank, the account was closed and the same was informed to the respondent, that thereafter the petitioner had been using Canara Bank account Aruppukkottai Branch and that the respondent, after fully knowing that the bank account maintained with City Union Bank by the petitioner was already closed, has purposely presented the cheque for collection with the sole intention to lodge the above complaint.

9.The learned counsel for the respondent would submit that the petitioner has not disputed the business transactions, she had with the respondent and that the petitioner has also not disputed the purchase of chemicals vide 7 invoices listed in the complaint.

10.The learned counsel for the respondent would further submit that it is not the case of the petitioner that she had paid the entire amount due to the respondent but on the other hand, she has claimed in the reply notice that the respondent has to pay a sum of Rs.2,66,805/- towards commission.

11.It is pertinent to note that whether the petitioner has not paid the amount claimed by the complaint, whether the respondent is liable to pay the commission amount claimed by the petitioner are the aspects that cannot be gone into, in the present petition.

12.Admittedly, the cheque was returned for the reason that the bank account was closed, but according to the petitioner, she has already informed the closing of the bank account with the City Union Bank Limited to the respondent, but that was disputed by the respondent.

13.As already pointed out, the petitioner has taken a stand that since the cheque was issued in the year 2016 and the same was allegedly presented in the year 2018, the same is barred by limitation, but according to the respondent, the cheque in dispute was given to the respondent only on 02.10.2018.

14.As rightly contended by the learned counsel for the petitioner, the above disputed aspects cannot be gone into by this Court and the same are matter for trial.

15.Now coming to the main stand of the petitioner that since the cheque in dispute was given as a security, the proceeding initiated by the respondent is legally unsustainable.

16.In support of his contention, the learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in ***Sudhir Kumar Bhalla vs. Jagdish Chand and others*** reported in ***2008 7 SCC 137***. In the said decision, the Hon'ble Supreme Court has set aside the judgment of conviction recorded by the High Court and remitted back to the High Court and the relevant passage is extracted hereunder:-

> *"22.On examination of the above-stated findings of the learned Single Judge in the judgment impugned before us, we find that the learned Single Judge has not addressed himself on the legal question raised before him by the appellant that the criminal liability of the appellant under the provisions of Section 138 of the Act are*

> *attracted only on account of the dishonour of the cheques issued in discharge of liability or debt, but not on account of issuance of security cheques. The learned Single Judge has also not given cogent, satisfactory and convincing reasons for disbelieving and discarding the pre-charge evidence of the appellant corroborated by the evidence of the expert opinion in regard to the interpolation in and fabrication of the cheques by adding one more figure '0' to make Rs.30,000/- to Rs.3,00,000/- and similarly adding one more figure '0' to make Rs.40,000/- to Rs.4,00,000/-."*

17.But recently the Hon'ble Supreme Court in ***Sunil Todi and Others Vs. State of Gujarat and another in Crl.A.No.1446 of 2021, dated 03.12.2021*** has specifically held that merely labelling the cheque as a security would not obviate its character as an instrument designed to meet a legally enforceable debt or liability and the relevant passage is extracted hereunder:

> "30. The submission which has been urged on behalf of the appellants, however, is that the fact that the cheques in the present case have been issued as a security is not in dispute since it stands admitted from the pleading of the second respondent in the suit instituted before the High Court of Madras. The legal requirement which Section 138 embodies is that a cheque must be drawn by a person for the payment of money to another "for the discharge, in whole or in part, of any debt or other liability'. A cheque may be issued to facilitate a commercial transaction between the parties. Where, acting upon the underlying purpose, a commercial arrangement between the parties has fructified, as in the present case by the supply of electricity under a PSA, the presentation of the cheque upon the failure of the buyer to pay is a consequence which would be within the contemplation of the drawer. The cheque, in other words, would in such an instance mature for presentation and, in substance and in effect, is towards a legally enforceable debt or liability. This precisely is the situation in the present case which would negate the submissions of the appellants."

18.The Hon'ble Supreme Court in ***Sripati Singh (since deceased) through his Son Gaurav Singh Vs. State of Jharkhand and another in Crl.A.Nos.1269-1270 of 2021, dated 28.10.2021***, has observed that the dishonour of cheque issued as security can also attract the offence under Section 138 of NI Act and that there cannot be hard and fast rule that a cheque which is issued as security can never be presented by the drawee of the cheque and the relevant passages are extracted hereunder:

"16. A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. 'Security' in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified time frame and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of N.I,. Act would flow.

17. When a cheque is issued and is treated as 'security' towards repayment of an amount with a time period being stipulated for repayment, all that it ensures is that such cheque which is issued as 'security' cannot be presented prior to the loan or the instalment maturing for repayment towards which such cheque is issued as security. Further, the borrower would have the option of repaying the loan amount or such financial liability in any other form and in that manner if the amount of loan due and payable has been discharged within the agreed period, the cheque issued as security cannot thereafter be presented. Therefore, the prior discharge of the loan or there being an altered situation due to which there would be understanding between the parties is a sine qua non to not present the cheque which was issued as security. These are only the defences that would be available to the drawer of the cheque in a proceedings initiated under Section 138 of the N.I. Act. Therefore, there cannot be a hard and fast rule that acheque which is issued as security can never be presented by the drawee of the cheque. If such is the understanding a cheque would also be reduced to an 'on demand promissory note' and in all circumstances, it would only be a civil litigation to recover the amount, which is not the intention of the statute. When a cheque is issued even though as 'security' the consequence flowing therefrom is also known to the drawer of the cheque and in the circumstance stated above if the cheque is presented and dishonoured, the holder of the cheque/drawee would have the option of initiating the civil proceedings for recovery or the criminal proceedings for punishment in the fact situation,

but in any event, it is not or the drawer of the cheque to dictate terms with regard to the nature of litigation."

19.The above decisions are squarely applicable to the case on hand.

20.In the case on hand, as already pointed out, the petitioner has herself admitted that the cheque in question was issued as a security.

21.Considering the above and applying the legal position above referred, this Court has no hesitation to hold that the contention of the petitioner that the proceeding initiated by the respondent is not maintainable, as the cheque was issued as a security, cannot legally be entertained. Hence, this Court concludes that this Criminal Original Petition is devoid of merits and the same is liable to be dismissed.

22.Considering the fact that the case is pending from the year 2018 onwards, this Court is of the view that necessary direction is to be issued to the trial Court for speedy disposal of the case.

23.In the result, the Criminal Original Petition is dismissed. However, the learned Judicial Magistrate No.II, Kumbakonam, is directed to complete the trial in S.T.C.No.1236 of 2018 and dispose of the case, as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (P & A)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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 Judicial Magistrate No.II, Kumbakonam.

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21.04.2022

RS (25.05.2022) 6P-2C