BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved on : 12.01.2022
Pronounced on : 20.01.2022
CORAM
THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

CRL.O.P.(MD).No.8763 of 2019
and
CRL.M.P(MD)Nos.5526 & 6265 of 2019

Justin : Petitioner/Sole Accused

Vs.

1.Thangavel : Respondents/Compolainant

2.The Branch Manager,
ICICI Bank Limited,
Alwarthirunagar Branch,
No.153, Arcot Road, Srisai Square,
Valasaravakkam, Alwarthirunagar,
Chennai. :2nd Respondent

[R2 impleaded as per order of this Court, dated 14.10.2019, made in MP(MD)No.6266 of 2019 in CRL.O.P.(MD).No.8763 of 2019]

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records pertaining to the proceedings in S.T.C.No.1373 of 2017 on the file of the Judicial Magistrate, Tiruchendur and quash the same as illegal.

For Petitioner : Mr.D.S.Haroon Rasheed

For Respondents : Mr.V.Malaiyendran, for R1.

: Ms.A.Banumathy, for R2.

ORDER

The Criminal Original Petition has been filed, invoking Section 482 of Code of Criminal Procedure, seeking orders to call for the records pertaining to the proceedings in S.T.C.No.1373 of 2017, pending on the file of the Judicial Magistrate, Tiruchendur and quash the same.

2.The petitioner is the accused in S.T.C.No.1373 of 2017 filed by the respondent and is pending on the file of the Judicial Magistrate, Tiruchendur.

3.The respondent has filed a private complaint under Section 200 Cr.P.C against the petitioner for the offence under Section 138 r/w 142 of Negotiable Instruments Act and the case was taken on file in S.T.C. No.1373 of 2017 on the file of the Judicial Magistrate, Tiruchendur.

4.The case of the complainant is that the complainant and the accused are well acquainted with each other, that the accused demanded loan of Rs.4,00,000/- to meet out his family expenses, agreeing to repay the same within a month, that the complainant has advanced Rs.2,00,000/- on 26.03.2017 and Rs.2,00,000/- on 10.04.2017, totally Rs.4,00,000/-, that when the complainant had demanded the return of the amount, the accused has issued a cheque dated 15.05.2017 for Rs.4,00,000/- drawn on ICICI Bank, Alwar Thirunagar Branch, Chennai to discharge the lability, that when the cheque was presented for collection, the same was returned as signature differs, that the complainant has then sent a legal notice, dated 26.05.2017 to the accused demanding him to pay the amount covered by the cheque, that the accused has received the notice sent to his shop address, but refused to claim the notice, which was sent to his home address, that subsequently, the complainant after coming to know that he had mentioned the ICICI Bank, Branch name as Kayalpattinam Branch instead of Chennai, Alwar Thirunagar Banch, has issued another legal notice, dated 30.05.2017, that the accused has refused to receive the notice sent to his shop address and refused to claim the notice, which was sent to home address and that since the accused has not chosen to pay any amount due by him, the complainant was constrained to file the above complaint.

5.The main contention of the petitioner/accused is that the cheque in question is not belonging to him and on the other hand, the same was belonging to his deceased brother Agustin.

6.The learned counsel for the petitioner would submit that the petitioner's brother Agustin was working in Muthoot Finance Company at Arumuganeri Branch, that while he was working there, there was an allegation of misappropriation of funds and subsequently, he committed suicide on 21.06.2017, that the complainant had misused the petitioner's brother's cheque and that is why the cheque was returned as the signature of drawer differs, that the complainant has purposely forged the signatures and presented the cheque, that the trial Court has also failed to consider the above aspects and has committed an error in taking cognizance of the case, that the petitioner has nothing to do with the complaint or with the alleged liability of his brother Agustin and that since the cheque in question is not belonging to the petitioner and the same was belonging to the petitioner's deceased brother, the very filing of the complaint by the respondent and taking cognizance of the case by the Court are illegal and as such the proceedings are liable to be quashed.

7.When the matter was taken up for hearing on 24.06.2019, this Court on hearing the submission made by the learned counsel for the petitioner that the disputed cheque was not belonging to the petitioner and he was not having any account in ICICI Bank, Alwarthirunagar Branch, Chennai, this Court has directed the petitioner to implead the Manager of ICICI Bank, Alwarthirunagar Branch, Chennai as a party/respondent and that in pursuance of the said order of this Court, the second respondent has been impleaded.

8.The petitioner has produced a copy of the FIR in Crime No.102 of 2017 under Section 174 Cr.P.C on the file of the Alwar Thirunagar Police Station, Tuticorin District, consequent to the death of the petitioner's brother Agustin and also the death certificate of the said Agustin issued by the Tirunelveli Municipal Corporation.

9.The learned counsel for the petitioner in his arguments would reiterate the contentions raised in the original petition.

10.The learned counsel for the second respondent /ICICI Bank would submit that the cheque in dispute is not belonging to the petitioner and the petitioner is not having any bank account in their branch and that the disputed cheque was given to the ICICI Bank account holder Agustin.

11.As rightly contended by the learned counsel for the petitioner, since the signature found in the disputed cheque is not that of the account holder Agustin, the same was returned as drawer's signature differs. At this juncture, it is necessary to refer the judgment of Hon'ble Supreme Court in **Alka Khandu Avhad Vs. Amar Syamprasad Mishra & Anr. (CRIMINAL APPEAL NO. 258 OF 2021, dated 08.03.2021)**, wherein the Hon'ble Apex Court has specifically held that the drawer of the cheque alone can be prosecuted for the offence under Section 138 of the Negotiable Instruments Act and the relevant passage is extracted hereunder:

> “7. *On a fair reading of Section 138 of the NI Act, before a person can be prosecuted, the following conditions are required to be satisfied: i) that the cheque is drawn by a person and on an account maintained by him with a banker; ii) for the payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability; and iii) the said cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account. Therefore, a person who is the signatory to the cheque and the cheque is drawn by that person on an account maintained by him and the cheque has been issued for the discharge, in whole or in part, of any debt or other liability and the said cheque has been returned by the bank unpaid, such person can be said to*

> *have committed an offence. Section 138 of the NI Act does not speak about the joint liability. Even in case of a joint liability, in case of individual persons, a person other than a person who has drawn the cheque on an account maintained by him, cannot be prosecuted for the offence under Section 138 of the NI Act. A person might have been jointly liable to pay the debt, but if such a person who might have been liable to pay the debt jointly, cannot be prosecuted unless the bank account is jointly maintained and that he was a signatory to the cheque."*

12.In the case on hand, admittedly, the disputed cheque is not belonging to the petitioner and the disputed cheque was not drawn by the petitioner on an account maintained by him.

13.It is not the case of the complainant that the petitioner and his brother were jointly liable or that they were holding joint account in the ICICI Bank. As per the dictum of the Hon'ble Supreme Court, even in case of joint liability, the drawer of the cheque alone can be prosecuted and a person other than the person, who has drawn the cheque cannot be prosecuted for the offence under Section 138 of Negotiable Instruments Act.

14.Considering the above, the very complaint lodged by the respondent for the offence under Section 138 Negotiable Instruments Act against the petitioner can only be considered as an abuse of the process of law and the same is liable to be quashed.

15.In the result, the Criminal Original Petition is allowed and the proceedings in S.T.C.No.1373 of 2017 on the file of the Judicial Magistrate, Tiruchendur, stand quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

das

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,
Tiruchendur.

CRL.O.P.(MD).No.8763 of 2019
and
CRL.M.P(MD)Nos.5526 & 6265 of 2019
20.01.2022

RK(15/02/2022) 5P 2C