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Crl.O.P.(MD)No.14088 of



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.08.2022

PRONOUNCED ON: 16.09.2022

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

Crl.O.P.(MD)No.14088 of 2019

and

Crl.M.P.(MD)No.8575 of 2019

A.Gnanasekeran : Petitioner/Accused

Vs.

A.Vijayasekaran : Respondent/Complainant

PRAYER : Criminal Original Petition has been filed under Section 482 Cr.P.C, to call for the records relating to the complaint dated 15.07.2019 under Section 138 and 142 of the Negotiable Instruments Act, in S.T.C.No.997 of 2019 on the file of the Judicial Magistrate No.I, Sivakasi and quash the same.

For Petitioner : Mr.M.Ajmalkhan
Senior Counsel
for Mr.V.Nagarajan

For Respondent : Mr.S.Shanmuga Velayutham
Senior Counsel
for Mr.T.Antony Arul Raj



ORDER

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This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records pertaining to the case in S.T.C.No. 997 of 2019, pending on the file of the Court of Judicial Magistrate No.I, Sivakasi and quash the same.

2. The petitioner is the sole accused and the respondent has filed a private complaint under Section 200 Cr.P.C., against the petitioner for the offences under Section 138 r/w 142 of the Negotiable Instruments Act. Admittedly, the petitioner and the respondent are blood brothers. It is not in dispute that their father Ayyanathan had 9 children viz., Rajasekaran, Chandrasekaran, Suriyaprabha, Gunasekaran, A.Vijayasekaran (complainant), A.Gnanasekaran (Accused), Chandraprabha, Rathnaprabha and Dhanasekaran, that their brother Chandrasekaran died on 25.03.1991 and their father died on 06.06.2002 and that after separation of some brothers, the complainant, the accused and Dhanasekaran were carrying on their family business. It is also not in dispute that the accused was the Chairman of Sivakasi Municipality for two period.

3. The case of the complainant is that when the complainant, the accused and their brother Dhanasekaran were managing their business, in order to protect



and safeguard the family name and family business, had chosen to go for several rounds of discussions and mediations from July 2016 in the presence of their friends and well wishers of the family and that after several round of discussions, an oral family arrangement was reached mutually between the members of the joint family on 23.08.2017 and the oral partition list was prepared in the first week of March 2018 and the same was signed by all the three brothers before the witnesses, that thereafter, by confirming the oral family arrangement, a memorandum of partition was entered on 26.04.2018 wherein the complainant, the accused and Dhanasekaran and all their family members had signed in the memorandum accepting the oral partition arrangement effected on 23.08.2017, that as per the said family arrangement, the members of the joint family had agreed to obtain the sale deed in the name of the accused relating to the properties situated in S.No.303/1 of Aranvoyal Village, Thiruvallur Taluk, that the entire sale consideration for the purchase of the said property was made prior to the partition and after the partition out of the funds from the Safire Offset Printers concern and that in order to have the equality of allotment of properties and in view of the purchase of the above property at Thiruvallur, the accused on 25.06.2018 consented to compensate by paying Rs.5,18,50,000/- as owelty to the complainant.



4. It is the further case of the complainant that the accused had issued a cheque bearing No.229729, dated 20.04.2018 drawn on Tamil Nadu Mercantile Bank Ltd., Sivakasi towards payment of owelty, that the accused had subsequently informed that he is not able to raise the funds and honour the cheque and had received the cheque back and issued another post dated cheque on 20.05.2018 bearing No.229730, dated 11.02.2019 drawn on Tamil Nadu Mercantile Bank Ltd., Sivakasi in favour of the complainant for Rs.5,18,50,000/- that the complainant has then presented the cheque for collection in Tamil Nadu Mercantile Bank, Sivakasi on 08.05.2019 for CTS transfer, that the cheque was returned as dishonoured for want of sufficient funds in the bank account of the accused, that the complainant has then sent a legal notice dated 06.06.2019 to the accused, demanding the payment of the amount covered by the cheque, that the accused having received the notice on 07.06.2019 sent a reply dated 14.06.2019 with all sorts of false allegations and that since the accused has not chosen to pay the amount, the complainant was constrained to lodge the above complaint.

5. The petitioner's case is that when himself, the complainant and Dhanasekaran were managing the business, he used to go for collection throughout the State and during such time, he kept signed blank cheques to be used for urgent business needs, such as payment of wages to the employees, payment of sales tax and so on and so forth, that due to the extensive travel, the



petitioner suffered with ortho problems and was admitted in Madurai Institute of Orthopedics and Traumatology (MIOT) hospital for his hip replacement, that he was admitted on 05.03.2018 and was discharged on 15.03.2018 after undergoing hip replacement surgery, that during the said period, the complainant and his younger brother showered passion upon him that they are looking after him well and thought he will not come to active business, that both of them had hatched conspiracy and planned to do away with the petitioner from the business and got his signatures in blank papers as well as the alleged typed family arrangements, that their evil design came to light when he received their legal notice dated 06.06.2019 and that the petitioner sent a fitting reply on 14.06.2019 stating that he has not given any cheque, as stated by the complainant.

6. It is the further case of the petitioner that there is no subsisting legal liability to issue the cheque, that the respondent, taking advantage of the petitioner's illness and his restricted movement, utilized the signed blank papers, reconstituted various family business firm deleting the petitioner from the firm, that there is no business transaction between the petitioner and the respondent and there is no legally enforceable debt, that the alleged averment of the complainant that the cheque is issued in view of owelty is not sustainable in the eye of law, that the properties are not at all valued and the question of excess value of property given to the petitioner does not arise, that the alleged cheque



was left in the office for urgent needs, when the petitioner was away from the headquarters and it is for the complainant to prove that the cheque was issued for payment of some debts and that therefore, the provisions under Sections 138 and 142 of Negotiable Instruments Act will not attract at all.

7. The learned Counsel for the respondent would submit that in terms of oral family arrangement, family business concerns when reconstituted, the accused had retired from the business concerns and the same was acted upon, that the said factum of reconstitution of business concerns were also intimated to the statutory authorities and to the bankers of the complainant and that the reconstituted partners of the firm alone are now carrying on the business and operating the bank accounts.

8. The learned Senior Counsel appearing for the petitioner would submit that there was no oral partition arrived at between the family members on 23.08.2017, that there were no discussions as alleged by the complainant and that the petitioner has not at all consented for the execution of the memorandum of family arrangement. The learned Senior Counsel would further submit that there was no business transaction between the petitioner and the respondent and hence, there is no subsisting liability and that there is absolutely no legally enforceable debt and even assuming that the cheque was issued towards owelty,



the same will not attract the provisions under Sections 138 and 142 of the Negotiable Instruments Act.

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9. The learned Counsel for the respondent would submit that as per the family arrangement, joint family business was reconstituted, that the Safire Industries were taken by Vijayasekaran and family, that the Safire Offset Printers was taken over by A.Dhanasekaran and family and that the reconstituted partnership deed was sent to the Registrar of Firms, Virudhunagar and the Registrar of Firms has issued Form-A and renewed periodically from 2018 to 2022. The learned Counsel for the respondent has also produced the copy of the memorandum of family arrangement and the learned Counsel would submit that the said memorandum of family arrangement runs to 178 pages and all the family members of both parties including the complainant and the accused and Dhanasekaran have subscribed their signatures in each page upto 178 pages and that the petitioner, now disputing the same, has not sent any complaint to the police or any other legal notice disputing the same.

10. The learned Counsel for the respondent has relied on a decision of this Court in *Mrs.Nirmala Vs. M.J.Periyasamy in Crl.O.P.No.16076 of 2010, dated 05.06.2015* wherein, allegedly the cheque was issued towards the amount payable under the family arrangements, the accused has taken a stand that he has



already lodged a complaint about the theft of the cheque in dispute and that the cheque was not at all issued towards legally enforceable liability. A learned Judge of this Court, rejecting the contention of the accused and by observing that the contention of the accused that no amount was payable by him and the cheque was not issued for legally enforceable liability cannot be accepted, dismissed the petition.

11. It is necessary to refer the judgments relied on by the learned Counsel for the respondent.

(i) In ***M.M.T.C. Ltd and another Vs. Medchl Chemicals and Pharma (P) Ltd.***, reported in ***(2002)1 Supreme Court Cases 234***, wherein the Hon'ble Apex Court has held as follows:

“ 13. The learned Judge has next gone into facts and arrived at a conclusion that the cheques were issued as security and not for any debt or liability existing on the date they were issued. In so doing the learned Judge has ignored well settled law that the power of quashing criminal proceedings should be exercised very stringently and with circumspection. It is settled law that at this stage the Court is not justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the complaint. The inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice. At this stage the Court could not have gone into merits and/or come to a conclusion that there was no existing debt or liability.



14. It is next held as follows:

"This is a special provision incorporated in the *Negotiable Instrument Act*. It is necessary to allege specifically in the complaint that there was a subsisting liability and an enforceable debt and to discharge the same, the cheques were issued. But, we do not find any such allegation at all. The absence of such vital allegation, considerably impairs the maintainability."

15. In the case of *Maruti Udyog Ltd. v. Narender* reported in (1999) 1 SCC 113, this Court has held that, by virtue of *Section 139* of the *Negotiable Instruments Act*, the Court has to draw a presumption that the holder of the cheque received the cheque for discharge of a debt or liability until the contrary is proved. This Court has held that at the initial stage of the proceedings the High Court was not justified in entertaining and accepting a plea that there was no debt or liability and thereby quashing the complaint.

16. A similar view has been taken by this Court in the case of *K. N. Beena v. Muniyappan* reported in 2001 (7) SCALE 331, wherein again it has been held that under *Section 139* of the *Negotiable Instruments Act* the Court has to presume, in a complaint under *Section 138*, that the cheque had been issued for a debt or liability.

17. There is therefore no requirement that the Complainant must specifically allege in the complaint that there was a subsisting liability. The burden of proving that there was no existing debt or liability was on the respondents. This they have to discharge in the trial. At this stage, merely on basis of averments in the Petitions filed by them the High Court could not have concluded that there was no existing debt or liability."



(ii) In ***Rathish Babu Unnikrishnan Vs. The State (Government of NCT of Delhi)*** and another in Crl.A.Nos.694-695 of 2022, dated 26.04.2022, the

Hon'ble Apex Court has held as follows:

“11. The legal presumption of the cheque having been issued in the discharge of liability must also receive due weightage. In a situation where the accused moves Court for quashing even before trial has commenced, the Court’s approach should be careful enough to not to prematurely extinguish the case by disregarding the legal presumption which supports the complaint. The opinion of Justice K.G. Balakrishnan for a three judges Bench in [Rangappa vs. Sri Mohan](#) would at this stage, deserve our attention: -

“26. ... we are in agreement with the respondent claimant that the presumption mandated by [Section 139](#) of the Act does indeed include the existence of a legally enforceable debt or liability. As noted in the citations, this is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant.”

13. Bearing in mind the principles for exercise of jurisdiction in a proceeding for quashing, let us now turn to the materials in this case. On careful reading of the complaint and the order passed by the Magistrate, what is discernible is that a possible view is taken that the cheques drawn were, in discharge of a debt for purchase of shares. In any case, when there is legal presumption, it would not be



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judicious for the quashing Court to carry out a detailed enquiry on the facts alleged, without first permitting the trial Court to evaluate the evidence of the parties. The quashing Court should not take upon itself, the burden of separating the wheat from the chaff where facts are contested. To say it differently, the quashing proceedings must not become an expedition into the merits of factual dispute, so as to conclusively vindicate either the complainant or the defence.

16. The proposition of law as set out above makes it abundantly clear that the Court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when the factual controversy is in the realm of possibility particularly because of the legal presumption, as in this matter. What is also of note is that the factual defence without having to adduce any evidence need to be of an unimpeachable quality, so as to altogether disprove the allegations made in the complaint.

17. The consequences of scuttling the criminal process at a pre-trial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial Court is ousted from weighing the material evidence. If this is allowed, the accused may be given an un-merited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption.”



12. The above decisions are squarely applicable to the case on hand. In the case on hand also, the petitioner has taken a main stand there is no existing debt or liability. As per the dictum laid down by the Hon'ble Supreme Court that by virtue of Section 139 of the Negotiable Instruments Act, the Court has to draw a presumption that the holder of the cheque received the cheque for discharge of a debt or a liability until the contrary is proved and that the burden of proof that there was no existing debt or liability is on the accused.

13. It is pertinent to note that the said burden of proof that there was no existing debt or liability has to be discharged only at the trial and this Court while exercising the power under Section 482 Cr.P.C., cannot go into those questions only on the basis of the averments in the quash petitions and decide as to whether there was no existing debt or liability. Even otherwise, to rebut the legal presumption against the accused, he has to adduce his evidence only at the trial and the evidence even if produced by the accused cannot be gone into at this stage.

14. It is pertinent to mention that the Hon'ble Supreme Court in *Dhruvaram Murlidhar Sonar vs The State Of Maharashtra* reported in **2019(18) SCC 191**, after considering the decision of the Hon'ble Supreme Court



in *State of Haryana and Others vs. Bhajan Lal and others* reported in 1992

Supp (1) SCC 335, has specifically held that exercise of powers under Section 482 Cr.P.C., to quash the proceedings is an exception and not a rule and that inherent jurisdiction under Section 482 Cr.P.C., though wide, has to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in Section itself. It is also settled law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 Cr.P.C., for quashing the criminal proceedings.

15. A perusal of the complaint and other records available, makes out a *prima facie* case against the petitioner at this stage and there appear to be sufficient ground for proceeding against the petitioner. Hence, this Court concludes that the above Criminal Original Petition is devoid of merits and the same is liable to be dismissed.

16. Since the case is pending from 2019 onwards, this Court is of the view that necessary directions are to be given for earlier disposal of the case.

17. In the result, this Criminal Original Petition is dismissed. Consequently, the connected Miscellaneous Petition is also dismissed. The learned Judicial Magistrate No.I, Sivakasi is directed to complete the trial and



dispose of the case in S.T.C.No.997 of 2019 as expeditiously as possible, preferably, within a period of three months from the date of receipt of a copy of this order.

16.09.2022

Index : Yes/No

Internet : Yes/No

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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 Judicial Magistrate Court No.I, Sivakasi.



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K.MURALI SHANKAR, J.

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