



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.01.2022

Delivered on : 15.03.2022

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CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.22611 of 2018

and

Crl.M.P.(MD)No.10626 of 2018

Karunakaran

... Petitioner/Accused

vs.

Pitchai
Proprietor
Sri Kanagadurga General Merchants
West Govindapuram,
Dindigul District.

... Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records relating to the private complaint in C.C.No.468 of 2018 on the file of the learned Judicial Magistrate Court No.II, Dindigul, and quash the same.

For Petitioner : Mr.J.Sulthan Basha
for M/s.Ajmal Associates

For Respondent : Mr.T.Lajapathi Roy

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 relating to the complaint in C.C.No.468 of 2018 pending on the file of the Judicial Magistrate Court No.II, Dindigul, and quash the same.

2.The petitioner is the accused. The respondent/complainant has filed a private complaint under Section 200 Cr.P.C. against the petitioner for the offences under Sections 138 r/w 142 of Negotiable Instruments Act and the learned Judicial Magistrate, after completing the necessary formalities, has taken cognizance of the



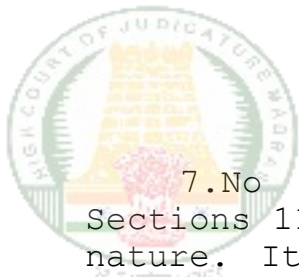
case in C.C.No.468 of 2018 and the same is pending on the file of the Judicial Magistrate Court No.II, Dindigul.

3.The case of the complainant is that the petitioner/accused has borrowed a sum of Rs.20,00,000/- from the complainant on 02.04.2018, that the accused in order to discharge the said liability has issued a cheque for a sum of Rs.20,00,000/- drawn on State Bank of India, Nehruji Nagar Branch, Dindigul, on 27.04.2018, that when the cheque was presented for collection, the same was returned for insufficient funds in the bank account of the accused, that the complainant, at the request of the accused, has again represented the cheque for collection and the same was again returned but for the reason "payment stopped by the drawer", that when the dishonor of cheque was informed to the accused, he requested the complainant to represent the cheque again, that the complainant, as per the instructions of the accused, has again presented the cheque for collection, but the cheque was dishonored as payment was stopped by drawer, that thereafter the complainant has sent a legal notice dated 04.07.2018 directing the accused to pay the amount covered by the cheque, that the accused, after receiving the statutory notice, has sent a reply notice dated 20.07.2018 with false allegations and that since the petitioner/accused has not chosen to pay the amount, the complainant was constrained to lodge the above complaint.

4.The main defence of the accused is that he has never borrowed any amount nor issued any cheque in favour of the complainant, that the petitioner has opened his bank account only on 06.04.2018 and as such, there was no occasion for the petitioner to issue a cheque in question on 02.04.2018, that the petitioner has lost his cheque book on 26.04.2018 and immediately he preferred a complaint before the concerned police and that the complainant, by getting the said cheque, has filed a complaint falsely implicating the petitioner with an evil intention to extract huge amount.

5.As rightly contended by the learned counsel for the respondent, the petitioner has specifically admitted that the cheque in question was belonging to him and that the same was issued from the bank account standing in the name of the petitioner. Moreover, it is the specific case of the complainant that the petitioner has not specifically disputed the signature found in the cheque in question.

6.As rightly contended by the learned counsel for the complainant that if the basic or foundational facts are established then statutory presumption can be raised in favour of the complainant under Sections 118 and 139 of Negotiable Instruments Act and in that situation, the accused can rebut the presumptions by raising probable defence.



7.No doubt, it is settled law that the presumptions under Sections 118 and 139 of Negotiable Instruments Act are rebuttable in nature. It is also settled law that the statutory presumption is always rebuttable and once acceptable rebuttal come from the defence, then the burden shifts to the complainant to prove by definite evidence that the rebuttal is liable to be brushed aside.

8.In the present case, as already pointed out, the petitioner has sent a reply notice dated 20.07.2018 in response to the statutory notice issued by the complainant on 04.07.2018 and in reply notice, the petitioner has taken a stand that after coming to know about the missing of cheque book and passbook, he immediately preferred a complaint before the Dindigul Town West Police Station and the same is pending. As rightly contended by the learned counsel for the respondent, the petitioner has nowhere disclosed as to when the police complaint was lodged, whether the case has been registered and what was the stage at that time.

9.Moreover, the main contention of the petitioner is that since he had opened the bank account only on 06.04.2018, the contention of the complainant that he received the cheque from the petitioner on 02.04.2018 is false and unbelievable. But as rightly pointed out by the learned counsel for the respondent, the cheque in dispute is dated 27.04.2018. No doubt, on the cheque date, the account was very much existence. Simple because the complainant has alleged that the accused has received the cheque on 02.04.2018, the complaint cannot be quashed.

10.This Court in exercise of powers under Section 482 Cr.P.C., cannot go into the truth or otherwise of allegations made in the complaint or deal into the disputed question of facts.

11.Considering the facts and circumstances of the case and the rival contentions put forth by the both the learned counsels, this Court is of the view that all the submissions made by the petitioner are directed towards the disputed question of fact which cannot be adjudicated by this Court under Section 482 Cr.P.C.

12.The defence now raised by the petitioner/accused is matter for trial and as such, the question of quashing the complainant at this stage does not arise at all. Hence, this Court concludes that the Criminal Original Petition is devoid of merits and the same is liable to be dismissed. Considering the fact that the case is pending from 2018 onwards, this Court is of the view that necessary direction is to be issued for the earlier disposal of the case.

13.In the result, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed. The learned Judicial Magistrate is directed to complete the trial and dispose of the case as expeditiously as possible preferably within a



period of four months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (AD I)

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Sub Assistant Registrar(CS)

CSM

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

1.The Judicial Magistrate No.II,
Dindigul.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-12431[F] dated 16/03/2022)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-12413[F] dated 16/03/2022)

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MGJ(25.04.2022) 4P 4C