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Crl.O.P.No.317 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.317 of 2022
and Crl.M.P.No.111 of 2022

S.Sivakumar

...Petitioner

-Vs-

H.Mangalram

...Respondents

Prayer : Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, 1973, to call for the records in C.C.No.3708 of 2014, pending on the file of the Learned XXIII Metropolitan Magistrate Court, Saidapet, quash the same.

For Petitioner : Mr.B.Hari Krishnan

For Respondent : Mr.M.A.Srinivasan

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.3708 of 2014, pending on the file of the Learned XXIII Metropolitan Magistrate Court, Saidapet.



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2. Heard the learned counsel for the petitioner and the learned counsel for the first respondent and perused the materials available on record.

3. The respondent filed a complaint for the offences punishable under Sections 138 and 142 of the Negotiable Instruments Act alleging that the petitioner borrowed a sum of Rs.15,00,000/- from the respondent and had executed a mortgage deed dated 18.11.2011. The petitioner had also handed over the original sale deed dated 15.11.2010 registered vide Document No.6180 of 2010. Thereafter, the said loan was repaid with interest. Subsequently, the petitioner along with his wife borrowed a sum of Rs.40,00,000/- and had executed a mortgage deed dated 21.01.2013 registered vide Document No.318 of 2013. As a security, the petitioner issued a cheque for a sum of Rs.5,00,000/-. That apart, the petitioner submitted the original sale deed. They also promised to repay the principal mortgage loan with interest. Towards the part payment of loan, the petitioner had paid a sum of Rs.50,000/- by way of cash and issued cheque for a sum of Rs.5,00,000/-. The said cheque was presented for



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collection and the same was dishonoured for the reason “Funds Insufficient”. After repeated request, the petitioner paid a sum of Rs.75,000/- by way of cash on 20.12.2013 and issued cheque for further sum of Rs.5,00,000/- dated 24.12.2013 and the said cheque was also presented for collection and the same was also dishonoured for the reason “Funds Insufficient”. After causing notice, lodged complaint.

4. The learned counsel for the petitioner would submit that though the petitioner and his wife borrowed a sum of Rs.6,50,000/-, mortgage deed was executed for a sum of Rs.40,00,000/- dated 21.01.2013 registered vide Document No.318 of 2013. Therefore, the respondent caused notice. Thereafter, the petitioner and his wife filed a suit for redemption of mortgage in O.S.No.142 of 2014, on the file of the District and Session Court, Tiruvallur. They also filed an application in I.A.No.373 of 2014 seeking an order of interim injunction. It was granted, on condition to deposit a sum of Rs.10,00,000/- to the credit of O.S.No.142 of 2014. It was also deposited and subsequently, it was permitted to be withdrawn by the respondent. However, the Trial Court



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dismissed the suit and aggrieved by the same, the petitioner preferred an appeal suit before this Court in A.S.No.420 of 2023. While granting an order of interim injunction, the Hon'ble Division Bench of this Court, directed to pay a sum of Rs.20,00,000/- to the respondent and it was paid and duly acknowledged by the respondent. Therefore, the amount involved in the present impugned cheque has been paid and nothing survives in the complaint lodged by the respondent.

5. Though, the learned counsel for the respondent contended that the property has been mortgaged and availed loan to the tune of Rs.40,00,000/- and as such, the complaint is very much maintainable, the appeal suit is pending before this Court and as such, the amount which was borrowed by the petitioner will be protected in the appeal suit. Therefore, the continuation of the proceedings for the offences under Sections 138 and 142 of the Negotiable Instruments Act is nothing but a clear abuse of process of law. In order to meet the ends of justice, the impugned proceedings cannot be sustained as against the petitioner and it is liable to be quashed. However, the interest of the respondent is



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protected in the appeal suit.

6. Accordingly, the proceedings in C.C.No.3708 of 2014, on the file of the Learned XXIII Metropolitan Magistrate Court, Saidapet, is hereby quashed. This Criminal Original Petition stands allowed. Consequently, connected Miscellaneous petition is closed.

24.11.2023

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
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G.K.ILANTHIRAIYAN. J.

mn

To

The XXIII Metropolitan Magistrate Court, Saidapet.

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24.11.2023