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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.03.2023

CORAM :

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

Crl.R.C.No.171 of 2020

N.Nagarani (deceased)

1.G.Navaneetha Krishnan
2.N.Yuvaraj
3.N.Kannan

[Petitioners P1 to P3 impleaded as per order dated 24.03.2022 in Crl.M.P.No.4479/22 in Crl.R.C.No.171 of 2020] .. Petitioners

Vs.

C.Vijendra Raja ..Respondent

PRAYER : Criminal Revision Case has been filed under sections 397 read with 401 of Criminal Procedure Code to set aside the judgment passed on the file of the Judicial Magistrate, Fast Track Court Magistrate Level No.II, Poonamallee in S.T.C.No.162 of 2014 dated 23.03.2017 and confirmed in Crl.A.No.45 of 2017 by the II Additional District and Sessions Judge, Poonamalle dated 22.11.2019.

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For Petitioners	:	Mr.Saikrishan for M/s.V.Raghavachari
For Respondent	:	Mr.R.Subramaniam

ORDER

This Criminal Revision Case is filed by the complainant, who is aggrieved by the dismissal of the private complaint initiated under Section 138 of Negotiable Instruments Act by the Trial Court and same confirmed by the Lower Appellate Court.

2 The gist of the complaint is that, the accused and the complainant had money transaction and in the course of the said transaction a cheque bearing number 000148 dated 30.09.2014 for a sum of Rs.15,00,000/- was issued by the accused from his account maintained at Karur Vysya bank, Porur branch. When the cheque was presented for collection, it was returned with an endorsement that "Funds Insufficient". After serving the statutory notice to the respondent's office address, which was returned, private complaint under Section 138 of Negotiable Instruments Act was filed before the Judicial Magistrate FTC., No.II, Poonamallee. The complaint was taken on file in S.T.C.No.162 of 2014.

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The complaint was resisted by the accused stating that the cheque was not issued to discharge any legally enforceable debt. In fact on 30.09.2013, a Memo of Understanding was entered between Nagarani, the complainant and Navaneethakrishnan one part and Vijayandra Raja, and Kavitha another part. In this connection a civil suit was filed by Nagarani before the City Civil Court in O.S.No.434 of 2015 and decree was passed against the accused and his wife Kavitha on 29.04.2015, for a sum of Rs.1,25,000/- being the interest payable under the MOU. Further, another suit was filed before the High Court original side in C.S.No.822 of 2015 by Nagarani, the complainant and her husband Navaneethakrishnan against Vijayandra Raja, the accused and his wife Kavitha in connection with recovery of Rs.36,50,000/- along with interest payable as per the terms of Memo of Understanding entered between the parties on 30.09.2013.

3 While so, it was contended by the accused that the cheque amount which is the subject matter of the criminal complaint is part of and included in the civil suit already initiated by the complainant and her

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husband for recovery of money based on the Memo of Understanding (MOU). Therefore pleaded that the criminal complaint under Section 138 of N.I.Act is unsustainable.

4 The Trial Court after perusing the documents particularly, the certificate copy of the decree passed in O.S.No.434 of 2015 dated 29.04.2015 marked as Ex.P8 and Ex.P9 has held that the parties have set civil law into motion for recovery of money owed under the MOU marked as Ex.P7. Therefore, the complaint based on the cheque issued to discharge partial liability arose under MOU is not maintainable. Further, the Trial Court has also doubted the financial capacity of the complainant to advance a loan of Rs.15,00,000/- taking note of the fact that the complainant was doing saree business and the source is not adequate to advance a huge amount.

5 The Trial Court has also taken note of the fact that the MOU is dated 30.09.2013, whereas the cheque in question is dated 30.09.2014 and it is probable that the cheque was issued in blank and filled

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subsequently. Therefore, the complainant's claim that the cheque in question Ex.P1 was issued for partial discharge of debt is incredible.

6 Being aggrieved by the dismissal of the complaint, the complainant has preferred Appeal before the II Additional District and Sessions Judge, Tiruvallur at Poonamalle in C.A.No.45 of 2017. The Lower Appellate Court has reiterated the finding of the Trial Court and dismissed the appeal.

7 Being aggrieved, the present Criminal Revision Case is filed contending that the finding of the Courts below is perverse and contrary to the law established.

8 According to the learned counsel for the revision petitioner, the complainant and the accused family are neighbours and know to each other for years and involved in exchange of money as loan for interest. The MOU marked as Ex.P7 was entered between them when the money payable by the accused become overdue and pending for a long period

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and after that the relationship between them got strained since the accused failed to repay the loan amount.

9 Narrating the back ground and the terms of payment, the parties entered into MOU on 30.09.2013 wherein the accused and his wife agreed to sell their house for Rs.36,50,000/- to the complainant for the pending balance of Rs.15,00,000/- was agreed to be paid by the accused through the cheque, which is the subject matter of the complaint. The accused and his wife had not honoured their part of agreement as found in the MOU. Neither sale deed in respect of property was executed in favour of the complainant nor the cheque issued by them towards partial discharge of the loan due was honoured. The civil suit before the City Civil Court in O.S.No.434 of 2015 was in respect of the interest accrued for the money payable subsequent to the MOU and it has no bearing in respect to the criminal complaint. Likewise, since the accused and his wife failed to execute the sale deed in respect of their house and based on the promissory note executed by them, civil suits before the High Court in C.S.No.822 of 2015 for recovery of money. Though ex-

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parte decree was passed in this suit, subsequently the accused/defendant has taken an application to set aside the ex-parte decree and same was allowed. Later, due to the pecuniary jurisdiction, the matter was transferred to City Civil Court and it is still in pending.

10 While the fact remains so, the cheque for Rs.15,00,000/- issued by the accused towards partial discharge of the loan availed and handed over to the complainant at the time of entering MOU is a sui generis case, which ought to have been dealt by the Courts below for dishonouring the cheque without maintaining sufficient fund. The Courts below have erroneously mistook the suit filed for the interest portion and the suit filed for the recovery of money based on the pro-note executed by the accused persons who agreed to sale the land which values for Rs.36,50,000/-, for honour the cheque give to the complainant for Rs.15,00,000/-.

11 The Trial Court had miserably failed to understand the scope and ambit of amendment to the Negotiable Instruments Act, which

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brought in Section 138 of N.I.Act, the Courts below had arrived at erroneous conclusion that the complainant has set the civil law into motion, therefore has lost the locus to initiate the complaint under Section 138 of N.I.Act. Section 138 of N.I. Act, meant to prosecute the persons who draw cheque without sufficient fund and issue it to discharge any enforceable liability. While so, the pendency of civil suit for recovery of money will not be a bar to file complaint under Section 138 of N.I.Act. The learned counsel for the revision petitioner hence sought for interference of this Court to set aside the erroneous order passed by the Courts below.

12 The learned counsel for the respondent vehemently argued that, the MOU which is relied by the complainant as proof for legally enforceable debt is a document obtained under force. The complainant husband was a driver to the high rank police officers and the sons of the complainant were also in the police force. Further the legality and enforceability of the MOU is already the subject matter of the civil suit pending. Therefore, the Trial Court has rightly dismissed the complaint

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since the accused by preponderance of probability has discharged the onus.

13 Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused.

14 The MOU marked as Ex.P7 being the foundational document for the complainant to establish that there was money transaction between him and the accused and pursuant to that, they have also entered into the said MOU and as one of the terms of MOU, the subject cheque Ex.P1 for Rs.15,00,000/- was handed over to the complainant. To this part of the evidence there is no contra evidence let in by the accused. His wife has mounted in the witness box and examined as DW.1. According to her, the cheque was given by her to the complainant while she had money transaction with her and this cheque was issued only as a security.

15 For the reasons best known, the accused has not mounted into the witness box to say anything about the transaction, though the

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cheque was issued by them. The suits which referred in the order of the Trial Court and the Lower Appellate Court stands on a different footing and different cause of action. While O.S.No.434 of 2015 pertains to the interest portion for the money due and payable since the parties have agreed to effect that under clause 10 of MOU and the said decree still in force and not been further challenged by the accused or his wife.

16 As far as the money suit based on the pro-note which has come into existence in pursuant to MOU is still pending and Suit is different from the cause of action for the complaint which is now under scrutiny. If one read Section 138 of N.I.Act, it would be clear that any person who draws the cheque to discharge enforceable liability, but does not maintain funds to honour the cheque, he will be liable to be prosecuted if he fails to pay the cheque amount within 15 days of receipt of the statutory notice. In the case in hand, issuance of cheque is admitted and never been disputed by the drawer of the cheque till date. The liability has been reduced into writing through MOU and the MOU also executed on 30.07.2013. Till date the same has not been challenged as

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invalid by the accused or his wife who are the second party to the document.

17 In the said circumstances, for some extraneous reason the Courts below have failed to consider the complaint and the evidence in proper perspective. Contrary to the settled principles of law, the Courts had dismissed the complaint citing that the complainant has failed to prove the source of income and the cheque was issued only as a security. It is admitted by the wife of the accused in the witness box that the complainant is a wife of a police personal. Her two sons are working in the Tamilnadu police. The complainant herself is carrying on Saree business. That apart, the money transaction between her and the complainant admitted and the issuance of cheque is also admitted. The sole defence taken by the accused through his wife is that the said cheque was issued only as a security whereas the terms of MOU which stands unchallenged indicates that the said cheque was issued for partial discharge of debt which has been ascertained and affirmed by the parties on 30.07.2013, when they entered into MOU.

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18 In the light of the above fact the illegality and erroneous findings of the Lower Appellate Court is set aside and the matter is remanded back to the Lower Appellate Court for re-appreciation of evidence in the light of the law laid down by the Apex Court and the provisions of law.

19 The Registry is directed to forward the record back to the Lower Appellate Court for re-appreciation of appeal. The appeal shall be heard and disposed of within a period of four months from the records received.

20 With the above direction, this Criminal Revision Case is disposed of.

17.03.2023

Internet : Yes/No
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To

1.The II Additional District and Sessions Judge, Poonamallee

2. The Judicial Magistrate, Fast Track Court Magistrate Level No.II, Poonamallee.

3. The Section Officer, Criminal Section, High Court, Madras.

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Dr.G.JAYACHANDRAN, J.

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