IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :20.01.2023

Pronounced on : 01.02.2023

CORAM:

THE HONOURABLE MS JUSTICE R.N.MANJULA

Crl.O.P.No.15343 of 2021 and
Crl.M.P.Nos.8379 and 8380 of 2021

Arjun ...Petitioner

Vs.

Vijay ...Respondent

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records with respect to complaint in C.C.No.259 of 2021 on the file of the Judicial Magistrate Court – I, Namakkal and quash the same as unlawful, unjust and abuse of process of law.

For Petitioner : Mr.P.Suresh Srinivasan, for
Mr.D.Rajashekhar

For Respondent : No appearance

ORDER

This Criminal Original Petition is filed to quash the complaint in C.C.No.259 of 2021 on the file of the Judicial Magistrate Court – I, Namakkal.

2. The petitioner is the sole accused in the complaint given by the respondent for dishonour of cheque.

3. Heard the learned counsel for the petitioner and perused the materials available on record.

4. Despite service of notice, the respondent has not appeared either in person or through counsel duly instructed.

5. The learned counsel for the petitioner submitted that the petitioner came to know the respondent as one of the prospective Car buyer from Cars 24 and the respondent has bought his Car on 17.12.2020 by fixing the sale consideration at Rs.1,20,000/-. After paying the entire sale consideration, on 17.12.2020, the respondent had taken away the car. On 30.12.2020, the petitioner received an SMS from his bank stating that his cheques bearing Nos.092162 and 092164 which were issued for a total sum of Rs.1,50,000/- have been returned as insufficient funds. When he checked his bank accounts, he came to know that a sum of Rs.50,000/- has already been debited from his account on 28.12.2020 pertains to a Cheque No.092159. He immediately blocked his cheques. On the same day, another cheque

bearing No.092160 was also deposited without his knowledge. On verification, the petitioner came to know that one Saravana Jayapal was the person who deposited the cheques with a forged signature for a sum of Rs.50,000/-. On 01.01.2021, another cheque bearing No.092165 was deposited by an anonymous person for a sum of Rs.8 lakhs with a forged signature and it was returned by the bank as "Payment Stopped by Drawer". The cheque was represented on 22.01.2021.

6.1. In the meanwhile, the respondent had issued a statutory legal notice for the alleged dishonour of cheque bearing Nos.092165 for a sum of Rs.8 lakhs. The petitioner has sent a detailed reply to the legal notice on 12.02.2021 by stating that he never gave any cheques to any one. Thereafter the petitioner came to understand that his cheque book was stolen from his car and misused by the respondent.

6.2. Hence, the petitioner filed a Police complaint on 13.02.2021, for which the respondent was called upon for an enquiry. However, the respondent simply asked the Inspector to transfer the case to Namakkal and switched off his mobile; subsequently on 04.03.2021, the respondent filed a private complaint against the petitioner before the Judicial Magistrate I, Namakkal and that has been taken on file in C.C.No.259 of 2021; on the complaint given by the petitioner, the enquiry is still pending and the summon was served to the respondent through police and it is returned as no such person; in this circumstance, on 25.06.2021, the petitioner's bank also confirmed that all the signatures in the cheques were forged one. According to the petitioner, even after the case was filed by the respondent for the offences under Section 138 of the Negotiable Instructions Act, he continues to remain absent. At this juncture, the petitioner has also filed a petition under Section 156 (3) Cr.P.C., seeking direction to register FIR against the respondent and by virtue of the order of the Metropolitan Magistrate V, Egmore, dated 07.09.2021, FIR was registered.

7. In the present case also, notice was delivered on the respondent on 05.03.2022, but he did not make his appearance. Even for the proceedings in C.C.No.259 of 2021, he has not made his appearance. After confirming that all the signatures in the cheques are forged, on 09.12.2021, a sum of Rs.50,000/- has been deposited in the petitioner's account. Since the records

would show that the Respondent had abused by forging petitioner's signature on the cheques, the proceedings should be quashed.

8. On perusal of the complaint, it is seen that the petitioner had filed the case basing on the cheque bearing No.092165, dated 15.12.2020 alleged to have been issued for a sum of Rs.8 lakhs. As per the averments of the respondent, the petitioner and the respondent were friends and the petitioner borrowed a sum of Rs.8 lakhs as hand loan on 12.07.2020 and he agreed to repay it within one month. Since the petitioner did not repay the amount as agreed, the respondent repeatedly persuaded him and he ultimately issued a cheque for a sum of Rs.8 lakhs. Since the Cheque was dishonoured, the respondent sent a legal notice on 05.02.2021 and for which the petitioner sent a reply on 12.02.2021 wherein it was stated that the respondent got introduced to the petitioner as a prospective buyer through Cars 24 for purchasing his Car in the month of December 2020. During that process the respondent had taken a test drive of the vehicle on 16.12.2020 itself. The car was sold by the petitioner to the respondent on 16.12.2020. On 16.12.2020 and 17.12.2020 the buyer of the petitioner's car paid Rs.20,000/- and

Rs.95,000/- respectively. The above sum was agreed to be the sale consideration for the petitioner's car.

9. One material contradiction which would affect the case of the respondent is the alleged date when the petitioner is said to have availed a hand loan of Rs.8 lakhs from the respondent. It is alleged in the complaint that the petitioner had availed a hand loan of Rs.8 lakhs on 12.07.2020 on a promise to repay within one month, but as agreed, he did not repay the same and after repeated persuasion, the respondent could get a cheque bearing No.092165 dated 15.12.2020 drawn for Rs.8 lakhs. If the petitioner had availed a loan of Rs.8 lakhs on 12.07.2020 and he was not capable of repaying the same in time, the respondent would not have come forward to pay the sale consideration for the car of the petitioner without opting to appropriate the same towards the alleged loan of Rs.8 lakhs.

10. The cheques of the petitioner bearing Nos.092162, 092164, 092159, 092160 and 092165 have been deposited in the petitioner's bank within a short span of one week from 28.12.2020. For the cheque presented

on 28.12.2020, an amount of Rs.50,000/- was debited from the petitioner's account and thereafter the petitioner had given a police complaint after giving intimation to bankers about the fraud. The petitioner had given a complaint to RBI Banking Ombudsman also. After an enquiry conducted by the said forum, the petitioner had got back Rs.50,000/- which was wrongly debited from his account for the cheque bearing No.092159 and which was presented on 28.12.2020. The bank has given a clear statement that all the cheques bearing Nos.092160, 092162, 092164 and 092165 contained forged signatures. The bank also admitted that the signature in the Cheque bearing No.092159 was also forged one and returned Rs.50,000/- which was debited from the petitioner's account towards honouring the cheque bearing No.092159. Even though the impugned cheque was returned as “Payment stopped by the drawer”, the fact remains that the signature on the cheques is a forged one.

11. On the Police complaint given by the petitioner, no effective action has been taken. Subsequently, the petitioner had filed a petition under Section 156 (3) of Cr.P.C, and on which a detailed order has been passed on

07.10.2021 by the Chief Metropolitan Magistrate V, Egmore and a direction has been given to register the case for stealing the unsigned cheques of the petitioner. FIR in this regard has been registered in Crime No.708 of 2021 against the respondent, Saravana Jayapalan and Arjunkumar of Cars 24.

12. The respondent avoided to make his appearance before the trial Court, though he had filed a complaint against the petitioner under Section 138 of the Negotiable Instruments Act. The reversal of Rs.50,000/- which was effected with regard to cheque No.092159 was done only after a detailed enquiry done by the RBI Banking Ombudsman. So all these facts borne by the documents coupled with the defaulting conduct of the respondent in making his appearance would show that the impugned cheque was not drawn and issued by the petitioner.

13. When the petitioner's banker himself has admitted that the signatures are forged ones, it cannot be claimed that the respondent had made out a case against the petitioner for an offence under Section 138 of the Negotiable Instructions Act. When the illegality is patent and there is

abuse of process of the Court, it is unnecessary to allow the petitioner to undergo the ordeal of trial and that would only aggravate the illegal acts already committed. Hence, I feel this should be considered as one of the rarest of the rare cases which deserves to be considered for quashing the proceedings.

14. In the result, the Criminal Original Petition is allowed and the proceedings in C.C.No.259 of 2021 on the file of the Judicial Magistrate I, Namakkal is hereby quashed. Consequently, connected miscellaneous petitions are closed.

01.02.2023

vum
Index:yes/No
Speaking order / Non speaking order

R.N.MANJULA,J.

vum

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