IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2023

CORAM:

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

Crl.O.P.No.19178 of 2021
and
Crl.M.P.No.10493 of 2021

B.Vidyaranya ...Petitioner

-Vs-

M.Suresh Babu ... Respondent

Prayer : Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records relating to S.T.C.No.115 of 2019 on the file of Judicial Magistrate, Fast Track at Hosur and quash the same.

For Petitioner : Mr.R.C.Paul Kanagaraj
For Respondent : Mr.K.Krishna

ORDER

This Criminal Original Petition has been filed calling for the records relating to S.T.C.No.115 of 2019 on the file of the learned Judicial Magistrate, Fast Track at Hosur and to quash the same.

2. The respondent lodged a complaint for the offence punishable

under Section 138 of Negotiable Instruments Act alleging that the respondent owned a property ad-measuring 1.83 acres. He submitted a plan and entrusted the project with the accused for the total sale consideration of Rs.5.52 Crores and a further condition was that the construction has to be completed within a period of three years. The respondent paid a sum of sum of Rs.3 Crores for construction viz., in the month of August, 2016, a sum of Rs.1 Crore, in the month of September, 2016, a sum of Rs.1 Crore and in the month of October, 2016, a sum of Rs.1 Crore were paid to start construction. Accordingly, the accused started the construction work. After receipt of the entire amount, the accused also signed a blank stamp paper, blank cheque to reimburse any excess payment of advance from the complainant. The construction work was very slow and as such, there was a mediation between them. However, the accused stopped the construction. Therefore, the defacto complainant valued the construction made by the accused at Rs.1,71,23,169/-. Therefore, the accused has to refund the balance amount. In order to realize the balance amount, after deducting a sum of Rs.7,20,000/-, a cheque for a sum of Rs.1,38,76,831/- was presented. It was returned dishonoured for the reason "Funds Insufficient". After causing statutory notice, the defacto complainant lodged a complaint.

After completion of investigation, the Trial Court had taken cognizance in S.T.C.No.115 of 2019 and issued summons to the accused.

3. There are totally three accused, in which the petitioner is arrayed as A1. Already, the second and third accused filed a quash petition before this Court and the same were allowed, since they were not the signatory to the cheque and they were no way connected with the Proprietor concern owned by the first accused viz., R.V.Information Technologies. The alleged cheque was issued in the name of R.V.Information Technologies signed by the first accused. The petitioner had already filed a quash petition in Crl.O.P.No.30035 of 2019 and the same was dismissed for default on 18.04.2023. Therefore, the petitioner filed this petition to quash the proceedings initiated by the respondent for the offence under Section 138 of Negotiable Instruments Act.

4. The learned counsel for the petitioner would submit that the petitioner never issued any cheque for a legally enforceable debt. In fact, the petitioner borrowed a sum of Rs.2 Crores in the month of June, 2013 from the respondent and issued four cheques bearing Nos.000242 to 000245 and five other cheques as security purpose. As agreed by the

petitioner, the petitioner paid interest along with the principal amount to the tune of Rs.3 Crores and 10 Lakhs for a loan of Rs.2 Crores. The present impugned complaint has been filed on the strength of the cheque bearing No.000245. Therefore, the cheque was not issued for any legally enforceable debt. He further submitted that the respondent engaged the petitioner for construction of a bungalow, which was estimated at Rs.5 Crores and 52 Lakhs for 13,000 sq.ft at the rate of Rs.3,400/- per sq.ft and the compound wall covering the entire area at a height of about 20 feet on a total cost of Rs.1 Crore and 10 Lakhs. The petitioner agreed to construct a bungalow and also agreed to complete the construction by June 2019. The amount which was already received as a loan to be treated as an advance and the petitioner started the construction. The petitioner had spent a total sum of Rs.4 Crores and 10 Lakhs and even then, the respondent failed to pay the balance amount. They adjusted a sum of Rs.1 Crore paid to R.R.Associates on behalf of the respondent. The other balance amount was not paid so far. In fact, in this regard, already the respondent caused notice on 04.04.2019, for which the petitioner categorically replied by the reply notice dated 27.04.2019 was duly received by the respondent. However, the respondent did not send any rejoinder for the reply notice issued by the petitioner. He further submitted that though the cheque was issued by the Proprietor concern, the respondent ought to have issued a notice for the Proprietor concern also. Unnecessarily, the respondent added the petitioner's wife and brother as accused. Therefore, the second and third accused filed quash petitions before this Court and the same were allowed by this Court. Therefore, the petitioner never issued any cheque for any legally enforceable debt and prayed for quashment of the complaint.

5. The learned counsel for the respondent would submit that the grounds raised by the petitioner can be considered only before the Trial Court during the Trial. The loan transaction is completely different from the construction agreement. As agreed by the petitioner, the respondent paid a sum of Rs.3 Crores towards the construction and the petitioner also agreed to complete the construction, within the month of June 2019. However, all of a sudden the petitioner stopped the construction. As agreed by the petitioner, the excess amount to be returned to the respondent who entrusted another contractor to value the construction made by the petitioner. Accordingly, it was valued and for the remaining amount as agreed by the petitioner, the respondent presented a cheque which was given at the time of receiving the amount. Therefore, at the

time of presentation of cheque, there was a debt. Therefore, it cannot be said that the cheque was not issued for any legally enforceable debt. He also submitted that already the petitioner filed a quash petition and the same was dismissed for default. This is the second quash petition and as such, it is not maintainable.

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

7. The points for consideration in this petition are that

(i) Whether the cheque dated 12.04.2019 was issued for any legally enforceable debt? and

(ii) The presentation of cheque by filling the amount of Rs.1,38,76,831/- would amount to alteration?

8. Admittedly, the petitioner was engaged to construct a bungalow by the respondent. According to the petitioner, a sum of Rs. 2 Crores was borrowed by him from the respondent and even after returning the amount with an exorbitant interest, the said amount was directed to be treated as advance for construction of a bungalow. Whereas, the case of the respondent is that the petitioner was engaged to construct a bungalow

for which, a sum of Rs.3 Crores was paid to him. At the time of receiving the amount, the petitioner issued blank stamp paper, signed blank cheque as security in order to refund the excess amount if any, after completion of construction. The construction was stopped half way through for the reason that the respondent failed to pay the construction cost. Therefore, the respondent engaged a private contractor to value the construction put up by the petitioner and valued at Rs.1,71,23,169/-. After adjusting a sum of Rs.7,20,000/-, the respondent filled up the cheque to the tune of Rs.1,38,76,831/- as balance amount to be refunded by the petitioner and presented the same. It was returned dishonoured for the reason that "Funds Insufficient". Therefore, admittedly, the impugned cheque was issued for the purpose of security along with a signed stamp papers in the year 2016.

9. In respect of construction put up by the petitioner, there was a dispute between both the parties. There was exchange of notices. In fact, the petitioner had sent a reply notice and categorically stated that the cheque bearing No.000245 was issued as security purpose at the time of borrowal of a sum of Rs.2 Crores. Even assuming that the cheque was issued at the time of receiving a sum of Rs.3 Crores as advance to construct a bungalow, it was not issued for any legally enforceable debt.

It was issued only for security purpose or for the purpose of refund of amount if any excess amount paid towards construction. Therefore, without the consent or knowledge of the petitioner, the cheque was filled up by the respondent and presented for collection. Therefore, it was not issued for any legally enforceable debt.

10. In order to attract the offence under Section 138 of Negotiable Instruments Act, there must be a legally enforceable debt. In this regard, it is relevant to extract the provision under Section 138 of Negotiable Instruments Act as follows:-

> *"**138. Dishonour of cheque for insufficiency, etc., of funds in the account.**— Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for 4 [a term which may be*

extended to two years'], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, 5 [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, "debt of other liability" means a legally enforceable debt or other liability."

11. The filling of cheque to the tune of Rs.1,38,76,831/- would amount to alteration. In this regard, it is relevant to extract the provisions under Section 87 of the Negotiable Instruments Act, as follows:-

" ***87. Effect of material alteration.—****Any material* *alteration of a negotiable instrument renders the same void as against anyone who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;*

Alteration by indorsee*—And any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.*

The provisions of this section are subject to those of sections 20, 49, 86 and 125."

12. The alteration arise in two contingencies, if it is with the consent of the parties and even if party does not given consent if the alteration is done in order to carry out common intention of the parties. It we apply this test, it can be said that neither of these contingencies exist so as to authorize the respondent to fill up the amount and date. Even according to the respondent, the alleged cheque was handed over in the year 2016. After filling up the amount and date, it was presented only in the month of April 2019. Further, the petitioner never instructed to present the cheque for collection. In fact, the petitioner had no knowledge about the filling of the cheque for a sum of Rs.1,38,76,831/- and presentation of the cheque. That apart, already there was exchange of notices between the petitioner and the respondent with regard to other

transactions. According to the petitioner, the cheque was issued for security at the time of borrowal of loan in the year 2013. Though the cheque is a Negotiable Instrument, which is transferable and negotiable, presumption under Section 138 of the Negotiable Instruments can be drawn only when the pre-conditions are satisfied. The respondent unilaterally filled the cheque and had put the date and without any authority, the respondent presented the cheque. Therefore, it would amount to material alterations and it becomes void.

13. Therefore, the entire proceedings initiated by the respondent for the offence under Section 138 of Negotiable Instruments Act cannot be sustained and it is liable to be quashed. Accordingly, the proceedings in S.T.C.No.115 of 2019 on the file of Judicial Magistrate, Fast Track at Hosur, is hereby quashed.

14. In the result, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous petition is closed.

12.10.2023

Internet: Yes

Index : Yes/No
Speaking/Non Speaking order
mn

G.K.ILANTHIRAIYAN. J,

mn

To

The Judicial Magistrate, Fast Track at Hosur.

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