



Crl.O.P.Nos.23595 & 23623 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2023

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THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.O.P.Nos.23595 & 23623 of 2021

Crl.O.P.No.23595 of 2021

G. Thulasiram

... Petitioner

Vs.

K. Harish,
Authorised Power Agent of S. Arumugham,
Managing Director,
M/s. Amsak Cranes Private Ltd.,
No.68, National High Road,
Varadharajapuram,
Chennai – 600 123.

... Respondent

Prayer : Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to the case in S.T.C.No.60 of 2019 pending on the file of the learned Fast Track Magistrate, Poonamallee and quash the same.

For Petitioner ... Mr. R. Thanigai Arasu

For Respondent ... Ms. Preethi S. Arasu



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M/s. Amsak Cranes Private Ltd.,
No.68, National High Road,
Varadharajapuram,
Chennai – 600 123.

... Respondent

Prayer : Criminal Original Petition is filed under Section 482 Cr.P.C., to set aside the order in Crl.M.P.No.1985 of 2019 dated 19.08.2021 in S.T.C.No.60 of 2019 passed by the learned Fast Track Magistrate, Poonamalle.

For Petitioner ... Mr. R. Thanigai Arasu

For Respondent ... Ms. Preethi S. Arasu

COMMON ORDER

Crl.O.P.No.23595 of 2021 is filed challenging the criminal proceeding in S.T.C.No.60 of 2019 on the file of Fast Track Magistrate, Poonamallee. Another Crl.O.P.No.23623 of 2021 is filed challenging the



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order passed in CrI.M.P.No.1985 of 2019 in S.T.C.No.60 of 2019 dated 19.08.2021 on the file of Fast Track Magistrate, Poonamallee.

2. The learned counsel for the petitioner contended that the petitioner is an accused in S.T.C.No.60 of 2019 on the file of Fast Track Court, Poonamallee. The complainant / respondent filed a complaint against the petitioner for the offence under Section 138 of Negotiable Instruments Act for dishonour of cheque bearing No.747568 dated 10.09.2018 for a sum of Rs.10 lakhs drawn on Yes Bank, Anna Nagar branch. When the cheque was presented for collection through his banker Indian Overseas Bank, Sriperumpudur branch, it was returned for the reason “Funds Insufficient”. Thereafter, for the second time it was presented on 03.12.2018 through the same bank, again the same was dishonoured and returned for the reason “Funds Insufficient”. Thereafter, complainant issued legal notice to the petitioner through his counsel dated 28.12.2018. Petitioner received a notice on 31.12.2018. Since the petitioner failed to pay the cheque amount, the complainant filed a criminal complaint under Section 138 of Negotiable Instruments Act. In that application, the learned Judge in C.M.P.No.1985 of



2019 ordered to deposit 20% of the cheque amount as interim compensation under Section 143-A(1) of Negotiable Instruments Act.

2.1 The learned counsel further contended that though the complainant raised in the complaint that this petitioner has to pay a sum of Rs.12,27,315/- as a balance purchase amount, for that a disputed cheque bearing No.747568 for a sum of Rs.10 lakhs was given by the petitioner, is not correct. There is a transaction of M/s.VSK Exports and Imports, for that transaction, there was a balance amount. For that purpose, the cheque of this petitioner has been misused. Under these circumstances, the offence is not made out against this petitioner since there is no transaction for the cheque amount and there is no legal liability to pay Rs.10 lakhs to the complainant by the petitioner. Therefore, seeking to quash the criminal proceedings against the petitioner in S.T.C.No.60 of 2019, the present petition has been filed.

2.2 Since there is no liability on the part of the petitioner, there is no question of payment of interim compensation. The impugned order passed in C.M.P.No.1985 of 2019 is also to be set aside.



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3. The learned counsel appearing for the respondent / complainant submitted that only for the balance amount of Rs.12,27,315/-, the petitioner paid a sum of Rs.10 lakhs bearing cheque No.747568 drawn on Yes Bank on behalf of Sriram Exports and Imports on 10.09.2018. Under these circumstances, only for legal transaction, a cheque has been issued. Since the cheque got dishonoured, the criminal proceeding has been proceeded against the petitioner / accused and there is no merit in this case.

4. Considered the rival submission and perused the records.

5. On perusal of the record, the fact reveals that the petitioner is an accused in S.T.C.No.60 of 2019 on the file of Fast Track Court, Poonamallee. The respondent / complainant filed a complaint for the offence under Section 138 of Negotiable Instruments Act for dishonour of cheque for a sum of Rs.10 lakhs cheque bearing No.747568 drawn on Yes bank, Anna Nagar branch. On persual of records, further reveals that the cheque bearing No.747568 dated 10.09.2018, was finally presented on 03.12.2018 and returned on 04.12.2018. The record further reveals that the



legal notice has been issued by the complainant on 28.12.2018 and it was received by the accused on 07.05.2018 and the case has been filed within a period of limitation i.e., within 10 days after the arisal of cause of action. Now the contention of the petitioner is that the disputed cheque bearing No.747568 for a sum of Rs.10 lakhs was not given for discharging any legal liability of the petitioner, the cheque was misused by the petitioner for the balance amount outstanding payable by VSK Exports and Imports. Whether the disputed cheque for a sum of Rs.10 lakhs bearing cheque No.747568 was given by the petitioner in discharging his legal debt towards the complainant or the cheque was misused by the complainant for the outstanding amount of VSK Exports and Imports, has to be adjudicated after letting in evidence.

6. The factual dispute cannot be adjudicated while exercising powers under Section 482 of the Criminal Procedure Code. It does not meet the parameters laid down by the Hon'ble Supreme Court in the case of ***State of Haryana vs. Ch.BhajanLal*** reported in ***AIR 1992 SC 604***. Therefore, I find no merit for quashing the criminal complaint and it is liable to be



dismissed.

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7. Accordingly, Crl.O.P.No.23595 of 2021 stands dismissed. Liberty is given to the petitioner to raise all his defence before the trial Court by letting in evidence.

8. With regard to interim compensation awarded under Section 143-A(1) of Negotiable Instruments Act in C.M.P.No.1985 of 2019, the petitioner disputed his legal liability of payment of any due to the complainant and contended that there is no due at all from the petitioner to the complainant. In such circumstances, there is no legal liability to the petitioner to pay any amount to the respondent / complainant and the cheque given by the petitioner is misused by the complainant for the separate transaction done by VSK Exports and Imports. Under these circumstances, it has to be adjudicated after evidence, the liability has be fixed. Therefore, there is no *prima facie* case for giving direction to deposit 20% of the compensation amount under Section 143-A(1) of Negotiable Instruments Act.



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9. Therefore, the impunged order is unsustainable and liable to be set aside. Accordingly, the impugned order passed in C.M.P.No.1985 of 2019 in S.T.C.No.60 of 2019 is hereby set aside.

10. In the result, Crl.O.P.No.23595 of 2021 stands dismissed. Crl.O.P.No.23623 of 2021 is allowed. The trial Court is directed to complete the trial within a period of four months from the date of receipt of copy of this order.

05.09.2023

Index : Yes/No
Neutral Citation : Yes/No
AT

To
The Fast Track Court, Poonamallee.



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V.SIVAGNANAM ,J.

AT

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