IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.25443 of 2019
And

Crl.M.P.Nos. 13636 & 13635 of 2019

1. Sri Sanjeevi Auto Finance
13/3, Srinivasa Complex
Palamaner Road, Pichanoorpet,
Gudiyattam Town, Vellore District

2. G.S.Baskar

3. B.Srinivasan

4. Narmadha

5. G.K.Nagaraj

6. R.Pandian

7. K.Ramachandran ... Petitioners/Accused 1-6 & 8

Vs

1. N.s.Baskar ...Respondent/Complainant

2. S.Suresh Babu ... Respondent/Accused -7

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records with respect to complaint in C.C.No. 260 of 2016 on the file of the Judicial Magistrate at Gudiyatham and quash the same.

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For Petitioners : Mr. M.Himavathi

For Respondents : No appearance

ORDER

The petitioner seeks to quash a private complaint under Section 138 of the Negotiable Instrument Act.

2. It is alleged in the complaint that the first accused company had issued a cheque in favour of the complainant for Rs.5,00,000/- in discharge of a loan said to have been taken on 02.08.2016. The cheque is dated 02.08.2016. When the said cheque was presented for collection on 05.08.2016, the same was returned for the reason 'payment stopped by the borrower'. The petitioners did not make the payment inspite of the statutory notice.

3. The learned counsel for the petitioners would submit that the seventh accused / Suresh Babu in collusion with the complainant has filed the impugned complaint. Though he is an accused in this case, he was instrumental in filing the impugned complaint due to an earlier dispute in the partnership. The learned counsel pointed out that the petitioners filed a complaint before the Gudiyatham Police on 11.09.2015 stating that the said Suresh Babu / seventh accused had taken away the cheques of the partnership firm without authorisation; that in the police station, during enquiry, the said Suresh Babu / seventh accused gave a letter admitting that he had taken the cheques and an undertaking that he would not misuse the cheques; he further stated that he could not return the cheques as he had lost it. It is further submitted that the said Suresh Babu resigned from the partnership firm on 31.03.2015; that Form-A issued by the Registrar Firm confirms the said fact; that he had signed the cheque unauthorisedly and has filed this complaint through the complainant to harass the petitioners.

4. The learned counsel for the petitioners would further submit that there is inherent improbability in the complaint itself. A private individual is said to have given loan to a finance company. The loan is said to have been advanced on 02.08.2016 and the complaint states that towards repayment, the cheque was issued after repeated demands and requests on the very same day ie., on 02.08.2016. This allegation itself is sufficient to show that the complaint is malafide.

5. This quash petition has been preferred by the accused Nos. 1 to 6 and 8. The complainant was shown as first respondent and the said Suresh Babu / seventh accused shown as second respondent. Though respondents have been served, none has entered appearance on their behalf.

6. This Court finds that a reading of the complaint shows that the cheque was signed by the seventh accused on behalf of the first accused. The complaint further describes him as Managing partner of the firm. There is no allegation as regards the other partners, namely, the accused Nos. 2 to 6 and 8 in the impugned complaint and petitioners 2 to 7 herein. The usual allegation that they are incharge and responsible to the conduct of the business of the first accused firm is absent in the impugned complaint. Hence, the petitioner Nos. 2 to 7 cannot be prosecuted on the basis of the allegations in the complaint. As regards, the first accused firm also, the learned counsel for the petitioners is right in saying that the entire complaint is inherently improbable. Firstly, because a private individual is alleged to have given a loan to a finance company and secondly, the loan is said to have been advanced on 02.08.2016. It is opposed to common sense to say that on the same day, a cheque was issued in discharge of the liability. That apart, the version of the petitioners that they had given a complaint to the police and in that complaint, the seventh accused had given a statement saying that he had taken the cheques and had lost it appears to be probable. Further, the seventh accused had resigned from the partnership as early as 31.03.2015 whereas the cheque is signed by him on 22.08.2016. Thus it clearly appears to be a case where the seventh accused due to his enmity on account of the difference of opinion in the partnership has misused the cheque and instigated the complainant to institute this complaint. Their further conduct in not appearing inspite of notice also confirms this fact. The complaint is a clear abuse of process of law.

SUNDER MOHAN. J,

vsg

7. In view of the above, this Criminal Original Petition is allowed and the complaint in C.C.No. 260 of 2016 on the file of the Judicial Magistrate, Gudiyatham is quashed. Consequently, connected Miscellaneous Petitions are closed.

20.03.2023

Index:Yes
vsg

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

Judicial Magistrate, Gudiyatham.

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