IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2023

CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

Crl.O.P.Nos.24914 & 24920 of 2021
and
Crl.MP.Nos.13728 & 13737 of 2021

Crl.O.P.Nos.24914 of 2021

B.Vijayalakshmi .. Petitioner/Accused

Versus

Ravi Bhooshanam ... Complainant / Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the entire records in C.C.No.1134 of 2021 on the file of Metropolitan Magistrate, FTC-II, Allikulam Road, Chennai and quash all further proceedings against the accused.

Crl.O.P.Nos.24920 of 2021

B.Sathish Babu .. Petitioner/Accused

Versus

Ravi Bhooshanam ... Complainant / Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the entire records in C.C.No.1135 of 2021 on the file of Metropolitan Magistrate, FTC-II, Allikulam Road, Chennai and quash all further proceedings against the accused.

In both cases:

For Petitioner	:	Mr.P.Ramesh Kumar
For Respondent	:	Mr.K.Manikandan for R.S.Kirubakaran

<u>COMMON ORDER</u>

These Criminal Original Petitions have been preferred to quash the proceedings in C.C.Nos.1134 & 1135 of 2021 on the file of the learned Metropolitan Magistrate, FTC-II, Allikulam Road, Chennai.

Since both the cases arises out of the same cause of action. But against the different petitioners. Both the petitions are taken up together and considered for a common order.

2.The petitioner is the accused against whom the respondent / complainant has filed a complaint for the offence under Section 138 of the Negotiable Instructions Act 1881.

3.Heard the submissions made by the learned counsel on either side and perused the materials available on record.

4.The learned Counsel for the petitioner submitted that in the complaint filed by the respondent, she has stated that the accused had approached the complainant and he sought financial assistance for some construction work during the year 2010 and availed a loan for a total sum of Rs.3,50,000/- on two occasions. The complainant states about further transactions between herself and the petitioner however this complaint pertains to a cheque dated 26/12/2019 issued for a sum of Rs.25,00,000/- towards the discharge of the balance amount due by the accused and her son. When the cheque was presented for collection on the instructions given by the petitioner on 26/12/2019, it was returned on 30.01.2020 as 'refer to drawer'. The impugned cheque is dated 26/12/2019. The loan was said to have been availed in the year 2010, since the complaint has not been about the cheque which was a legally enforceable debt or liability, hence the proceedings should be quashed.

5.The learned counsel for the respondent submitted that the submissions of the petitioner about the point of limitation itself a question of fact and hence the petitioners had got the burden to prove that the debt involved in the cheque is barred by limitation; since the petitioner did not deny the execution of the cheque, the initial presumption would be in favour of the respondent; hence, the proceedings cannot be quashed at this stage without subjecting the parties to undergo the process of trial. In respect of the above contention the learned counsel for the respondent cited the judgment of the Hon'ble Supreme Court in **Yogesh Jain Vs. Sumesh Chandha** reported in **2022 LiveLaw (SC) 879.**

6.As per the allegations in the complaint, it is said that the petitioner had approached the respondent to avail a loan in the year 2010. Even though some of the loan transactions between the petitioner and the respondent were mentioned with dates and some other allegations as to the further financing done by the respondent, the respondent did not disclose any dates.

7.In the judgment referred by the learned counsel for the respondent in ***Yogesh Jain case (cited supra)*** it is held that once the executant of the cheque is not disputed, the claim that the liability on the impugned cheque is barred by limitation is to be proved by the accused. In the said judgment, it is held as under:

> *"It appears prima facie from the materials on record that the loan was advanced sometime in the year 2011. The cheque in question duly issued by the accused for the discharge of the debt is dated 01.11.2018 and complaint for the offence under Section 138 of the N.I. Act was lodged on 14.01.2019. It appears that the High Court has gone by the date of the loan transaction to be precise the year of the loan transaction. If a cheque is issued on 01.11.2018 for the discharge of the debt incurred in the year 2011 then prima facie it could be said to be an acknowledgement of the debt. This aspect needs to be re-considered by the High Court in its true perspective. The High Court in its impugned order has observed as under:-*
>
> > *"There is no averment in the entire complaint as regards any kind of acknowledgement of the said debt by the petitioner within the period of three years i.e. the limitation period to recover the debt. Thus, there being no acknowledgement by or on behalf of the accused, it cannot be said that the complaint filed in respect of the said debt was maintainable." Thus, what is sought to be conveyed by the High Court is that the acknowledgement of the debt at the instance of the accused should have been within three years from the date of transaction and there is no averment in the complaint in this regard. We fail to understand such a line of reasoning by the High Court. We say so because the loan which was advanced of Rs. Five Lakh by the complainant to the accused was for a period of seven years. Prima facie, it appears that the liability towards repayment of the loan was to be discharged within a period of seven years. If that be so, then on what basis the initial first three years have been taken into consideration by the High Court for the purpose of counting the limitation. Perhaps what is in the mind of the High Court is that by the time, the cheque in question was issued the debt had become barred by limitation because no acknowledgement was obtained*

> *before the expiry of three years from the date of loan. However, as noted above, the understanding was to discharge the liability within a period of seven years. Prima facie, we are of the view that the period of limitation would start reckoning from the expiry of the period of seven years."*

Once a cheque is issued and upon getting dishonoured a statutory notice is issued, it is for the accused to dislodge the legal presumption available under Sections 118 and 139 resply of the N.I. Act. Whether the cheque in question had been issued for a time barred debt or not, itself prima facie, is a matter of evidence and could not have been adjudicated in an application filed by the accused under Section 482 of the CrPC."

8. On a reading of the entire facts involved in the above case, it is seen that the parties have agreed to repay the loan amount within a period of 7 years and hence at the time when the cheque was issued, the debt covered under the cheque was not barred by limitation.

9. The learned counsel for the petitioner submitted that the present complaint on the face of it does not make out a case in view of the transactions were of the year 2010 and the cheque was issued in the year 2019. Only if the parties are allowed to undergo trial, it can be known whether the amount involved in the impugned cheque has been issued for a loan which is still existing.

10. The learned counsel for the petitioner has submitted that the petitioner denies the execution of the cheque itself. In that case it is a clear case which has to face the trial in order to prove various facts submitted made by the petitioner before this Court. Since there are triable facts and issues under marked, it is essential to subject the petitioner to face the trial. In view of the same, I feel it is premature to invoke the powers of this Court under Section 482 of Cr.P.C. and hence, this petition is liable to be dismissed.

In the result, these Criminal Original Petitions stand **dismissed.** Consequently connected miscellaneous petitions are closed.

07.02.2023

Index: Yes/No
Internet: Yes/No
Speaking / Non Speaking
Neutral : Yes /No

jrs

R.N.MANJULA, J.,

jrs

To:

The Metropolitan Magistrate,
FTC-II, Allikulam Road, Chennai.

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