[IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.29824 of 2022
and Crl.M.P No.18273 of 2023

Mr.Ashwin Kumar S ... Petitioner

vs.

Mr.Jagadish Srininvasan ... Responden

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to S.T.C.No.4669 of 2022 pending on the file of the learned Metropolitan Magistrate, Fast Track Court-2, Egmore at Allikulam Commercial Complex, Chennai, quash the complaint filed therein under Section 138 of the Negotiable Instruments Act, 1881.

For Petitioner : Mr.K.Vasu Venkat

For Respondent : Ms.M.Abirami for
M/s.P.Dinesh Kumar

ORDER

This criminal original petition has been filed challenging the proceedings initiated by the respondent for offence under Section 138 of the Negotiable Instruments Act.

2.Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the respondent.

3.The respondent has filed a private complaint against the petitioner by making the following allegation:

> *5.The complainant states that in a transaction relating to Gift Declaration, the accused is liable to pay to the complainant a sum of Rs.54,00,000/- (Rupees Fifty Four Lakhs only). In order to discharge the legal liability, the accused issued a cheque bearing No.987080 dated 21.12.2021 drawn on the State Bank of India, HSR Lay out, Bengaluru Branch for a sum of Rs.54,00,000/- (Rupees Fifty Four Lakhs only) with instructions to the complainant deposit the cheque for collection on 21.12.2021.*

4.The Gift Declaration that has been referred to at Paragraph No.5 of the complaint is extracted hereunder:

> *That I out of natural love and affection, I bear towards Jagadish Srinivasan, my brother, referred to as the Donee, residing at No.18, Apt #A3, 2nd Crescent Park Road, Gandhi Nagar, Adyar, Chennai, Tamil Nadu, 600 020 have this day 21st of December 2021, gifted the sum of Rs.54,00,000/- (Rupees Fifty Four Lakhs only) via SBI*

(State Bank of India) Cheque No.987080, drawn in favour of Jagadish Srinivasan.

I further declare that on and from this day, the said gift amount vests with the said Donee, and In have no kind of right, title or interest over the said gif amount and that no other person claiming through me also shall have any king of claim, right, title or interest over the amount gifted.

I further swear that the contents of this declaration are true and correct. On and from this day, the Donee shall be at liberty to use the said sum as she may choose. The gift made under this declaration is irrevocable.

5.The petitioner and the respondent are brothers and the petitioner is said to have issued a cheque for a sum of Rs.54,00,000/- as a gift to the respondent and when this cheque was presented for clearance, it was dishonored with an endorsement 'Payment was stopped by drawer". Subsequently, a statutory notice was issued which was followed by filing the criminal complaint.

6.The short issue that arises for consideration is as to whether the allegation made in the complaint read with the Gift Declaration will constitute a debt or liability which is the *sine qua non* for initiating proceedings under Section 138 of the Negotiable Instruments Act.

7.A gift is defined under Section 122 of the Transfer of Property Act, 1882 as follows:

> ***Section 122. "Gift" defined***
> *Gift is the transfer of certain existing movable of immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.*
>
> ***Acceptance when to be made. -*** *Such acceptance must be made during the life time of the donor and while he is till capable of giving.*
>
> *If the donee dies before acceptance, the gift is void.*

8.It is clear from the above definition that the transfer of property in the case of gift is made voluntarily and without any consideration by the donor to the donee. It is clear from the Gift Declaration that such gift was made by the petitioner to the respondent out of natural love and affection. In view of the same, by no stretch, it can be construed as a debt or liability on the part of the petitioner.

9.In the light of the above discussion, this Court holds that there is no debt or liability towards which the cheque was issued by the petitioner and in the absence of the same, the very foundation to make out a case under Section 138 of the Negotiable Instruments Act is not present in this case.

10.In the light of the above discussion, the continuation of the proceedings against the petitioner will amount to an abuse of process of law which requires the interference of this Court under Section 482 of Cr.P.C. Accordingly, the proceedings in STC No.4669 of 202 on the file of the learned Metropolitan Magistrate, FTC-2, Egmore at Allikulam Commercial Complex. Chennai, is hereby quashed. It is made clear that the present order will not stand in the way of the respondent to workout his remedy before the competent Civil Court in the manner known to law.

11.This criminal original petition is allowed in the above terms. Consequently, connected miscellaneous petition is closed.

06.07.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
ssr

N. ANAND VENKATESH,. J.
ssr

To

1.The Metropolitan Magistrate,
Fast Track Court-2,
Egmore at Allikulam Commercial Complex,
Chennai.

2.The Public Prosecutor,
High Court of Madras,
Madras.

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