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Crl.O.P No.31020 of 2019



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2023

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

Crl.O.P No.31020 of 2019

and

Crl.M.P Nos.16885, 16887 of 2019 & 4371 of 2023

A. Raja

... Petitioner

Vs.

A. Kamalanathan

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the entire records pertains to STC.No.595 of 2019, pending on the file of Judicial Magistrate No.1, Tirupattur, Vellore District and quash the same as illegal.

For Petitioner : Mr. R. Ramesh

For Respondent : Notice served, not appeared

ORDER

This Criminal Original Petition has been filed seeking to call for the entire records pertaining to STC.No.595 of 2019, pending on the file of Judicial Magistrate No.1, Tirupattur, Vellore District and quash the same as



illegal.

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2. The learned counsel for the petitioner submitted that the respondent gave a complaint against the petitioner under section 138 r/w.section 142 of Negotiable Instruments Act alleging that the petitioner borrowed a sum of Rs.4,00,000/- as hand loan and in order to discharge the same, for the security purpose, he issued four cheques, each one lakh in favour of the respondent and when the same was presented before the bank, the cheques were returned with an endorsement 'Refer to drawyer', hence the petitioner has committed offence under section 138 of Negotiable Instruments Act. The complaint was taken on the file of learned Judicial Magistrate No.1, Thiruppathur, Vellore District and the petitioner is arrayed as an accused in STC.No.595 of 2019 on the file of Judicial Magistrate I, Thiruppattur. The learned counsel further contended that the petitionere had never seen the respondent in his life and he never had any business transaction with the respondent. The business transaction was only between the petitioner and complainant's brother one Venkatesan. The respondent/complainant also filed another complaint against this petitioner in C.C.No.106 of 2019 on the file of Judicial Magistrate, Pochampalli. The



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petitioner, during the transaction with the said Venkatesan, gave the cheques for the security purposes, but the said Venkatesan without returning the cheques which was given as security, filled those unfilled cheques and engaged the respondent herein to file this petition. Further, with an intention to defraud the petitioner by misusing the cheques, two cheques out of four cheques were presented in some other bank at Krishnagiri and by using his brother viz., Kamalanathan, he presented other two cheques before a bank at Thirupathur. There is no requirement for issuing four cheques on the same day for a single amount of Rs.4 lakhs and the petitioner never had any money transaction with the respondent. Further, the cheques given for security purpose, was misused as though it was issued on the same day and has been presented before the different banks for collection. Since there is no liability or legal debt, the complaint given by the respondent under section 138 of Negotiable Instruments Act is not maintainable. Thus the petitioner prays for quashing of criminal proceedings initiated against the petitioner based on the complaint given by the respondent.

3. Though notice has been served on the respondent and his name



being printed in the cause list, there is no representation for him either in person or through counsel, when the matter is called today.

4. Heard the submissions of the learned counsel for petitioner and perused the materials available on record.

5. On perusal of records, it is seen that the petitioner is an accused in STC.No.595 of 1999 on the file of learned Judicial Magistrate No.1, Tiruppattur, Vellore District. The respondent filed a complaint against the petitioner for the offence under section 138 of Negotiable Instruments Act for dishonouring of cheque for a sum of Rs.4 lakhs, dated 27.05.2019. Since the cheques presented before the Bank have been returned with an endorsement, 'refer to drawer', legal notice was issued to the petitioner. After issuing legal notice, since the amount due under the cheques remained unpaid, he filed a complaint against the petitioner.

6. According to the petitioner, he did not dispute the signature upon the cheques and the cheques are admittedly maintained in his account, but the only contention raised by him is that there is no transaction between the



petitioner and the respondent at any point of time. The petitioner has transaction only with the brother of the petitioner. He gave four cheques to the brother of the petitioner for security purpose and the same is not issued towards discharging any legally enforceable debt. Since, there is no legal liability, the complaint is not maintainable, hence he seeks to quash the criminal proceedings initiated against him.

7. Since the signatures in the cheques are admitted and the cheques are maintained in his account, the defence raised by the petitioner that the cheques were issued only for the purpose of security and not towards discharging any legally enforceable debt and other factual disputes has to be adjudicated before the trial court by letting in evidence. Therefore, this court is of the view that by invoking section 482 Cr.P.C., the complaint in STC.No.595 of 2019 cannot be quashed.

8. At this juncture, it is pertinent to point out that the Hon'ble Supreme Court has discussed in detail about the inherent powers of the High Courts under Section 482 Cr.P.C in the following cases:

(i) *R.P.Kapur Vs. The State of Punjab* reported in *AIR 1960 SC 866*



(ii) *State of Haryana & Ors. Vs. Ch.Bhajan Lal & Ors.* reported in

AIR 1992 SC 604

(iii) *M/s.Neeharika Infrastructure Pvt. Limited Vs. State of*

Maharashtra & Ors. reported in 2021 SCC Online SC 315

7.1. In the case of ***R.P.Kapur Vs. The State of Punjab*** reported in ***AIR 1960 SC 866***, the Hon'ble Supreme Court has held as follows:

“6. It is well-established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the Court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the



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offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained."

9. Further, in the case of ***State of Haryana & Ors. Vs. Ch.Bhajan Lal & Ors.*** reported in ***AIR 1992 SC 604***, the Hon'ble Supreme Court issued seven guidelines to be followed by the High Courts in the exercise of its inherent power vested by Section 482 Cr.P.C to quash the FIR/complaint, which are as follows:

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.



(2) *Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*

(3) *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

(4) *Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*

(5) *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

(6) *Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.*

(7) *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

10. Similarly, in the case of ***M/s.Neeharika Infrastructure Pvt.***

Limited Vs. State of Maharashtra & Ors. reported in 2021 SCC Online SC

315, the Hon'ble Apex Court has observed as follows:

“80., our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or “no coercive steps to be adopted”, during the pendency of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of



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India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or “no coercive steps to be adopted” during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the *Constitution of India*, our final conclusions are as under:

i) Police has the statutory right and duty under the relevant provisions of the *Code of Criminal Procedure* contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;



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x) *Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;*

xi) *Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;*

xii) *The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;*

xiii) *The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;*

xiv) *However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;*

xv) *When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;*

xvi) *The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of*



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powers under Section 482 Cr.P.C. and/or under Article 226 of the *Constitution of India*. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or “no coercive steps to be adopted” and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or “no coercive steps” either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the *Constitution of India*.

xvii) Even in a case where the High Court is *prima facie* of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the *Constitution of India* referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of “no coercive steps to be adopted” within the aforesaid parameters, the High Court must clarify what does it mean by “no coercive steps to be adopted” as the term “no coercive steps to be adopted” can be said to be too vague and/or broad which can be misunderstood and/or misapplied.”

11. It is to be noted that the present case does not meet the parameters laid down by the Hon'ble Supreme Court in the decisions cited



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supra. In view of the above this court is of the opinion that the defence raised by the petitioner as to whether the cheques were issued for the purpose of security and other factual disputes has to be adjudicated before the trial court by letting in evidence. In the above circumstances, this Court is of the view that it is inappropriate to quash the criminal proceedings against the petitioner/accused in STC.No.595 of 2019 on the file of Judicial Magistrate No.I, Tiruppattur, Vellore District. Therefore, this court finds no merits in this petition. Hence the Criminal Original Petition is dismissed with liberty to petitioner to raise all his defence before the trial court. Consequently, the criminal miscellaneous petitions are closed.

20.07.2023

Index : Yes/No
Speaking Order : Yes / No
msr

To

The Judicial Magistrate No.1,
Tirupattur,
Vellore District



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V. SIVAGNANAM, J.

msr

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