IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2023

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.O.P.No.24170 of 2018
and
Crl.M.P.No.13684 of 2018

S. Suresh Kumar ... Petitioner

Vs.

M/s. Reliance Commercial Finance Pvt. Ltd.,
(Formerly known as Reliance Capital Limited),
Represented by its Deputy Manager, R. Kumaran,
No.5, Haddows Road, Nungambakkam,
Chennai – 600 006. ... Respondent

Prayer : Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the entire records relating to C.C.No.6094 of 2013 from the file of the Fast Track Court III (Metropolitan Magistrate), Saidapet, Chennai and quash the same.

For Petitioner ... Mr. D. Sivakumaran

For Respondent ... Mr. K.B. Vivekananthan

ORDER

This Criminal Original Petition is filed to call for the entire records relating to C.C.No. 6094 of 2013 from the file of the Fast Track Court III (Metropolitan Magistrate), Saidapet, Chennai and quash the same.

2. The learned counsel for the petitioner submitted that the petitioner entered into an agreement with the respondent / complainant on 27.01.2011 and obtained a loan of Rs.15,50,000/- for the purpose of purchase of a Ashok Leyland Lorry with trailer, valued at Rs.17,99,945/-. At the time of entering into an agreement on 27.01.2011, he handed over six cheques to the complainant and also filed the copy of the blank cheques given by him to the complainant. In such circumstances, the complainant in the complaint in C.C.No.6094 of 2018 in para No.4, stated that the petitioner gave a cheque bearing No.294470 drawn on ICICI Bank, Namakkal, Branch, Namakkal-637 001, for Rs.2,57,135/- dated 07.04.2018 to the complainant towards the part payment and the same was dishonoured with an endorsement “Payment stopped by drawer”. This

averment is totally contrary to the loan agreement entered between the petitioner and complainant.

3. Further, the learned counsel for the petitioner submitted that the petitioner, on receiving the notice from the complainant, issued reply notice on 23.05.2018 which was also received by the counsel for the complainant, to that effect, an acknowledgement was also filed along with materials. To the contrary, in para 5 of the complaint, the complainant stated that the petitioner / accused neither preferred any reply nor come forward to settle the dues. Therefore, on these two grounds, the complaint has to be quashed.

4. To support his arguments, the learned counsel for the petitioner placed reliance on the following judgments:

i) The judgment reported in ***CDJ 2005 Ch HC 060*** in ***Bellary Steels & Alloys Ltd., Vs. Vendana Ispat Private Ltd.,*** wherein, the relevant paragraphs are extracted hereunder:

> *"10. The factual scenario frescoed above goes to show that the complainant had not come to the Court with clean*

hands as he did not reveal the fact that after issuing the legal notice he had received a sum of Rs.14 lakhs by encashing the Bank draft sent by petitioner No.1 and even then did not return the original cheque which he was very much required to do as soon as the payment offered by petitioner No.1 was accepted by him..

11. Thus, it is clear as broad day light that the complainant has deliberately concealed the material facts and the complaint has been filed by him maliciously with an ulterior motive just to harass the petitioner No.1, and thus is is nothing but a sheer abuse of process of law and thus it is a case where the power under Section 482 of the Cr.P.C., should be duly exercised."

ii) The judgment reported in ***(2008) 3 M.L.J (Crl) 771*** in ***Mahesh Kumar Vs. Adi Nath Exports, rep. By its Managing Partner, Ramesh Kumar Sethia, Erode,*** wherein, the relevant paragraphs are extracted hereunder:

12. A perusal of the impugned complaint, as already pointed out, discloses the contents of the list of documents, including the Bank Memo dated 5.4.2004 and the Debit Advice dated 15.4.2004. But in the list of documents, there is absolutely no mention about the Bank Memo on which the 2nd statutory notice dated 26.6.2004 was sent and served on the petitioner herein. It is pertinent to be noted that in the contents of the impugned complaint, there is a mention in paragraph 3 about the Bank memo dated 15.6.2004. But the same was not mentioned in the list of documents in the complaint. It is also pertinent to be noted, as already pointed out, the respondent/complainant has deliberately suppressed the material factor of first presentation of the cheque and thereafter, on the dishonour of the cheque, issuing the first statutory notice dated 19.4.2004 as the same *was evident from the production of the copy of the first statutory notice dated 19.4.2004 and the postal cover before this Court. This Court is of the considered view that such deliberate suppression of the issuing and serving of the first statutory notice dated 19.4.2004 would clearly amount to playing fraud before the Court.*

13. The learned counsel for the petitioner rightly placed reliance on the decision reported in (supra) wherein the Hon'ble Apex Court has held that:-

"22.A person case is based on false-

hood can be summarily thrown out at any stage of litigation. We have no hesitation to say that a person whose case is based on falsehood has no right to approach the Court and he can be summarily thrown out at any stage of the litigation. In the instant case, non-production of the order and even non-mentioning of the conviction and sentence in criminal case No.202 of 1997 tantamount to playing fraud on the Court. The litigant who approaches the Court is bound to produce all documents which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the Court as well as on the opposite party."

5. The Learned counsel for the respondent / complainant submitted that there is no dispute about the liability of the petitioner for re-payment of the loan received from him. In this regard, an arbitral proceedings is also pending. It is also not disputed by the petitioner. Under these circumstances, the trial has to be conducted and there is no ground to quash the complaint.

6. I have considered the matter in the light of the submissions

made by the counsel on both side and perused the records.

7. On perusal of the records reveals that the petitioner is an accused and the respondent is a complainant in C.C.No.6094 of 2018 on the file of the Fast Track Court, III (Metropolitian Magistrate), Saidapet, Chennai.

8. Further, on perusal of the complaint, the fact reveals that the complainant filed the complaint against the petitioner for dishonour of cheque bearing No.294470 dated 07.04.2018 for a sum of Rs.2,57,135/- given in lieu of loan obtained by the petitioner from the complainant as per the agreement dated 27.01.2011. In this regard, it is relevant to extract paragraphs 3 to 5 of the complaint, which reads as follows:

> *"3. The complainant states that the accused approached the complainant for obtaining the loan under the Product of CV. After the processing, scrutiny of the loan application submitted by all of the accused. The complainant approved and sanctioned a loan. A loan agreement was also entered between the complainant and all of the accused under Agreement No.RLNVSLM00170144.*
>
> *4.The complainant further states that while obtaining the said loan, the accused had promised Complainant to*

repay the loan amount as stipulated in the said Loan Agreement. Accordingly the accused issued a cheque dated 07.04.2018 bearing No.294470 drawn on ICICI Bank, Namakkal Branch, Namakkal – 637 001, for Rs.2,57,135 to the complainant towards the part payment of above referred loan. On 16.04.2018, the complainant had presented the above referred cheque for encashment with his banker HDFC BANK LTD., CMS-OPERATIONS, Mylapore, Chennai – 600 004. On 17.04.2018, the said cheque was dishonoured with an endorsement "20-PAYMENT STOPPER BY DRAWER".

5.The complainant states that they caused a legal notice dated 10.05.2018 by RPAD through their counsel. The same was duly received and acknowledged by the accused. Thereafter the accused neither preferred any reply nor come forward to settle the dues."

9. In para No.3 of the complaint an agreement No.RLNVSLM00170144, is not disputed by the parties. In para No.4 of the complaint, it is averred that the accused issued a cheque dated 07.04.2018, cheque bearing No.294470 drawn on ICICI Bank, Namakkal Branch, Namakkal – 637 001, for Rs.2,57,135/-. In para 5, it is averred that the accused neither preferred any reply nor come forward to settle the dues.

10. These averments are false allegations. As per the agreement

No. RLNVSLM00170144 dated 27.01.2011, the complainant received 6 cheques from the petitioner. The details of the cheques are mentioned in the agreement. Further, it is also not disputed that the present disputed cheque is one of the 6 cheques issued during the execution of the agreement dated 27.01.2011.

11. Under these circumstances, the averment in the complaint that the cheque issued dated 07.04.2018 is a false one *per se.* Further, the averment in the para 5 of the complaint that the accused / petitioner not sent any reply for the notice received from the complainant is also a false one. On the contrary, the petitioner issued a reply notice through his counsel dated 23.05.2018 which was received by the counsel for the complainant in respect of the same acknowledgement is also filed. Therefore, it is also a false averment. Further among the materials, the petitioner filed the blank cheques issued by the petitioner to the complainant at the time of entering into an agreement. It reveals the fact that the alleged disputed cheque was not given on 07.04.2018. Therefore, the true fact is not disclosed before the trial Court and the complaint

contains not the true fact, it amounts to suppressing the true fact.

12. In view of the principle stated by this Court in ***Mahesh Kumar's*** case (supra), filing a complaint with false allegation suppressing the true fact, cannot be permitted to proceed further.

13. Under these circumstances, a complaint under Section 200 Cr.P.C., r/w Section 138(b) of Negotiable Instruments Act in C.C.No.6094 of 2018 on the file of Fast Track Court III (Metropolitan Magistrate), Saidapet, Chennai is not proper and liable to be quashed.

14. Accordingly, this Criminal Original Petition is allowed quashing the proceedings in C.C.No.6094 of 2018 on the file of Fast Track Court III (Metropolitan Magistrate), Saidapet, Chennai. Consequently, connected miscellaneous petition is closed.

21.07.2023

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

V.SIVAGNANAM ,J.

AT

To
The Fast Track Court III (Metropolitan Magistrate),
Saidapet, Chennai

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