BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :25.08.2023

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THE HONOURABLE MR.JUSTICE P.DHANABAL

Crl.O.P(MD) No.3231 of 2020

P.Ramamoorthy ... Petitioner

-Vs-

P.Ananthan ... Respondents

PRAYER:- Criminal Revision Petition is filed under section 482 of Cr.P.C to call for the records pertaining to the complaint filed by the respondent before the learned Judicial Magistrate No.VI, Fast Track Court(Magisterial Level) Madurai in S.T.C.No.17 of 2020 and quash the same as against the petitioner.

For Petitioner : Mr.B.Rajesh Saravanan
For Respondent : No appearance.

ORDER

This Criminal Original Petition has been filed to quash the proceedings in S.T.C.No.17 of 2020 on the file of the learned Judicial Magistrate No.VI, Fast Track Court(Magisterial Level) Madurai

2. According to the petitioner the respondent filed a cheque complaint under Section 138 of the Negotiable Instruments Act

against this petitioner and the same was taken on file in S.T.C. NO.17 of 2020 by the learned Judicial Magistrate No.VI, Fast Track Court (Magisterial Level) Madurai. According to the complaint the petitioner approached the respondent and obtained a sum of Rs.1,00,000/- in April 2015 and that amount was repaid with interest as Rs.1,20,000/-. According to the complaint the petitioner is known to the respondent and he had borrowed a sum of Rs.3,50,000/- from the respondent on 21.04.2016. Thereafter on 01.12.2016 the petitioner paid a sum of Rs.1,20,000/- and remaining Rs.2,30,000/- has to be paid within six months , but the petitioner failed to repay the same. Whileso, on 12.08.2019 the petitioner gave a cheque(Allahabad Bank Cheque No. 544904) for a sum of Rs.2,30,000/- and the same was presented for collection on 13.08.2019 but the said cheque returned dishonored for the reason “ Funds Insufficient”. Thereafter the same was informed to the petitioner and on 07.09.2019 sent notice to the petitioner and the same was received by the petitioner on 09.09.2019 but he neither gave reply nor settled the amount. Hence he filed the above complaint.

2.1. In fact the petitioner approached the respondent and obtained loan in the year 2015 for a sum of Rs.1,00,000/- and the same was repaid with interest as Rs.1,20,000/-. At that time the above said cheque was handed over to the respondent for security purpose. After settling the amount when the petitioner demanded to return the cheque the respondent represented that the cheque was misplaced and he will not take any steps on the basis of the cheque. Believing the words of the respondent the petitioner did not take steps to get back the cheque. Thereafter the petitioner received notice dated 07.09.2019 and came to know that the above said cheque was misused by the respondent. Thereafter the petitioner approached the respondent and asked to return the cheque but he told that the cheque was with his advocate and he will try to return it. Thereafter the respondent filed this false complaint under 138 of the Negotiable Instrument Act. The petitioner has never issued the cheque for any legally enforceable debt. Even according to the complaint the cheque was issued for the time barred debt. Therefore the learned Magistrate without considering the above facts has taken the case on file and thereby the charge sheet in S.T.C. No. 17 of 2020 is liable to be quashed.

3. The respondent has not appeared before this Court. Already notice served. Inspite of that none appeared on behalf of the respondent.

4. The learned counsel for the petitioner would contend that the respondent has filed a false case against the petitioner alleging that the petitioner received a sum of Rs.3,50,000/- from the respondent on 21.04.2016. Thereafter on 01.12.2016 he paid a sum of Rs.1,20,000/- and remaining Rs.2,30,000/- have to be paid within six months. Thereafter the petitioner has not repaid the balance amount and thereby the respondent approached the petitioner and he issued a cheque dated 13.08.2019 and when the same was presented for collection on 14.08.2019 it was as returned dishonored for the reason “insufficient funds”. Infact the petitioner has not issued the above said cheque for the above said amount as alleged by the respondent. The petitioner also borrowed a sum of Rs.1,00,000/- on April 2015 and at the time of borrowal of the amount the cheque was handed over to the respondent for security purpose and thereafter the entire amount was repaid. When the petitioner asked about the cheque the respondent represented that it was misplaced and thereafter the cheque was misused by the respondent and this petitioner received notice from the respondent. After notice when he approached the respondent he represented that he will return the cheque and it was under the custody of his advocate. Thereafter he did not return the cheque and filed a false complaint. Even according to the averments of the complaint, the amount was borrowed on 21.04.2016 and the

cheque was issued on 13.08.2019 i.e., after three years i.e.,after the lapse of limitation period. Therefore even as per the complaint the said cheque was not issued for legally enforceable debt. therefore the proceedings in S.T.C. No. 17 of 2020 is liable to be quashed.

5. This Court has heard the arguments of the learned counsel for the petitioner and perused the materials available on record.

6. According to the petitioner the cheque was not issued for legally enforceable debt. Already he had borrowed a sum of Rs.1,00,000/- from the respondent and the same was repaid in the year 2015 itself. At the time of borrowal of the said amount the cheque was handed over to the respondent for security purpose. Thereafter the above said cheque was misused by the respondent but there is no document to substantiate that contention. However the complainant averred in the complaint that on the date of borrowal of amount is on 21.04.2016 cheque was issued on 13.08.2019 i.e., after the period of three years i.e.,after the limitation period. When there are averments in the complaint that on 01.12.2019 the part amount was paid there is no record to show that the above said amount was paid on 01.12.2016. Therefore the above said repayment on 01.12.2016 as alleged in the petition would not amount to

acknowledgement for debt. As per Section 18 of the Limitation Act the acknowledgement should be in written within the limitation period but in this case there is no written acknowledgement by the petitioner. Though in the complaint there is an averment that the petitioner repaid a sum of Rs.1,20,000/- on 01.12.2016 no records produced to show that the petitioner had given written acknowledgment. Mere averments in the complaint are not sufficient to hold that there is an acknowledgment. Therefore the averments made in the complaint show that the cheque was issued for time barred debt. In this context the learned counsel appearing for the petitioner relied on the following judgments:

i)***M/s.Jage Ram Karam Singh and another.vs. State and another*** in Crl.Rev.P.82/2013, wherein it is held as follows:

> *26. Further, it has been held time and again by the Apex Court as well as by the various High Courts that mere giving of a cheque, without anything more, will not revive a time-barred debt, because cheque has to be given, as contemplated by the explanatory, in discharge of a legally enforceable debt. In this regard, it may be relevant to take note of the order dated 10.9.2001 relied upon by the learned counsel for the respondent No.2 titled Sasseriyil Joseph v. Devassia(supra) wherein, in a similar case, it has been held by the Supreme Court that, a cheque which has been issued by the accused for a due which was barred by limitation, the penal provision under Section 138of the NI Act is not attracted. The relevant observations made in this regard in the aforesaid judgment are reproduced hereunder: -*

"We have heard learned counsel for the petitioner. We have perused the judgment of the High Court of Kerala in Criminal Appeal No. 161 of 1994 confirming the judgment/order of acquittal passed by the Addl. Sessions Judge, Thalassery in Criminal Appeal No. 212 of 1992 holding inter alia that the cheque in question having been issued by the accused for due which was barred by limitation the penal provision under Section 138of the Negotiable Instruments Act is not attracted in the case.

On the facts of the case as available on the records and the clear and unambiguous provision in the explanation to Section 138 of the Negotiable Instruments Act the judgment of the lower appellate Court as confirmed by the High Court is unassailed.

Therefore, the special leave petition is dismissed."

ii) ***Samadharman and other .vs. S.Nataraja*** in Crl.O.P(MD) No.3824 of 2012, wherein it is held as follows:

23. In the instant case, it has already been pointed out that at the time of issuance of cheque that is, on 01.02.2011, the debts alleged to have been received by the petitioners have become time barred. Therefore, viewing from any angle, the contention put forth on the side of the petitioners is really having subsisting force.

7. On a careful reading of the above said judgments it is clear that if cheque was issued for time barred debt then the proceedings under Section 138 of the Negotiable Instruments Act would not attract. In this case also cheque was issued for time barred debt,

thereby the case laws submitted by the learned counsel for the petitioner are squarely applicable to the present facts of the case.

8. In view of the above discussions this Criminal Original Petition is allowed and the proceedings in S.T.C.No.17 of 2020 on the file of the learned Judicial Magistrate No.VI, Fast Track Court(Magisterial Level) Madurai is hereby quashed.

25.08.2023

Index : Yes/No
Internet : Yes/No
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To

The Judicial Magistrate No.II,
Fast Track Court(Magisterial Level) Madurai

P.DHANABAL, J.

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