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Crl.O.P.(MD)No.11906 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 06/10/2023

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

Crl.OP(MD)No.11906 of 2023

and

Crl.MP(MD)No.9371 of 2023

V.Kandasamy : Petitioner/Sole Accused

Vs.

P.Pandi : Respondent/Complainant

PRAYER:- Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records relating to STC No.422 of 2023 on the file of the Judicial Magistrate Court No.II, Sattur and quash the same as illegal and pass such further or other orders.

For Petitioner : Mr.S.V.Nagarajan

For Respondent : Mr.Ashok Kumar

O R D E R

This criminal original petition has been filed seeking quashment of the case in STC No.422 of 2023 on the file of the Judicial Magistrate Court No.II, Sattur.



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2.The case of the prosecution in brief:-

The respondent as complainant filed a private complaint under section 200 Cr.P.C for punishing the accused under section 138 of the Negotiable Instruments Act. That was taken cognizance in STC No.422 of 2023 by the Judicial Magistrate No.II, Sattur.

3.The averments in the complaint is that he entered into a rental agreement with one Madhavan in respect of the property situated in Survey No.4/149, Ramakudumpampatti, Kottanatham, Virudhunagar District, for his bottling unit business. The rental period was fixed at 11 months. It started, on 13/04/2022. He constructed a building and put up iron pole with top of M.S Cooling sheet for his business purpose. With the permission of the above said Madhavan, he spent more than Rs.18,00,000/- for the purpose of putting up the construction. It was known to the above said owner namely Madhavan. Madhavan decided to sell the property. At that time, he assured that the construction costs will be settled. The accused approached the above said Madhavan and assured that the entire cost of construction will be settled. The accused agreed to pay Rs.14,00,000/-. A settlement was arrived between the accused and the



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complainant for Rs.14,00,000/-. The complainant signed as witness in the sale deed executed by Madhavan in favour of the accused, on 21/11/2022 and on the same day, the accused issued two cheques drawn on ICICI Bank, RK Nagar Branch, Bangalore, for Rs.7,00,000/- each. The above said two cheques were presented for payment at the City Union Bank, Sattur branch, on 22/02/2023, But the cheques were returned as dishonoured. After completing the statutory formalities, he filed a private complaint before the Magistrate Court. Upon the direction of the Judicial Magistrate No.II, Sattur, the case was taken cognizance in STC No.422 of 2023

4. Seeking quashment of the same, this petition has been filed by the petitioner on the ground that M/s.Nisha Aqua Firm was run by the above said Madhavan; He suffered paralysis; He wanted to sell the Unit along with land; One Raja approached the above said Madhavan for purchasing the same in the name of his mother namely Mariammal; An unregistered sale agreement was entered, on 11/07/2022; As per the sale agreement, Rs.1,63,00,000/- was fixed as purchase amount, but Madhavan failed to perform his part of contract; He also failed to pay the loan amount; So the Bank initiated SARFEASI proceedings and the Unit was brought for sale. To avoid the above



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said situation, the petitioner paid the entire amount and closed the account; A sale deed was also executed for vacating the land along with bottling Unit; At that time, the above said Raja, intimidated Madhavan to pay Rs.34,00,000/-; The family members of the purchaser filed several complaints before the Deputy Superintendent of Police, Virudhunagar; Since the petitioner had borrowed loan amount from his Bank, he transferred Rs.20,00,000/- from ICICI Bank branch to the Bank account of the above said Raja; The above said Raja is working under the complainant; Only as per the direction of the above said Raja, two cheques for Rs.7,00,000/- each were issued in favour of the complainant; But he never borrowed any money from him; Since the above said two cheques were issued under threat and coercion by the Inspector of Police, DCB, Virudhunagar. the above said cheques are not supported by any valid consideration; Madhavan issued notice to the complainant, on 22/02/2023; That was received, but no reply was given; so the petitioner issued stop payment notice.

5.Heard both sides.

6.The facts that have been narrated in the grounds are all factual issues. The issuance of cheques is not



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disputed. But what was the disputed is the availability of the valuable consideration as noted above.

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7.It is the case of the petitioner that the above said two cheques were issued under threat and coercion. Whether there was any coercion and threat by the Inspector of Police, DCB, Virudhungan, to aid and support the complainant and Raja cannot be a matter for consideration by this court by exercising the jurisdiction under section 482 Cr.P.C. This is completely a factual issue.

8.The next contention on the part of the petitioner is that the non availability of the valid consideration is apparent on the face of the complaint averment itself. He is referring to the complaint para No.2.

9.In the complaint, as stated above, it has been stated by the complainant that construction was put up at his own costs with the consent and knowledge of the original owner namely Madhavan. But absolutely, this is not correct, even as per the documents produced by the complainant. According to him, the rental agreement, dated 15/04/2023 does not indicate the above said



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construction. In the rental agreement, one of the conditions is that they should not put up any construction or alteration in the premises without the permission of the landlord.

10. According to the learned counsel appearing for the petitioner, when there is a clear violation of the condition, the above said construction appears to have been made. So, the cost of construction is not bound to be reimbursed by the owner of the property. So, according to him, the illegal construction will not give any of liability in favour of the complainant.

11. The learned counsel appearing for the respondent would submit that even in the reply notice, the issue of the cheques was admitted.

12. When such contention is admitted, then the legally enforceable liability can be presumed. Whether the above said construction was put up with the consent of the owner, whether there was any agreement between the owner and the complainant regarding the cost of the construction are all factual matters, which cannot be taken into account at this stage. So, I am of the considered view that no legal ground has been made out by



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the petitioner to quash the proceedings. The petitioner has to face the trial process to its logical conclusion.

13.In the result, this criminal original petition is **dismissed**. Consequently, connected Miscellaneous Petition is closed.

06/10/2023

Index:Yes/No
Internet:Yes/No

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To,

The Judicial Magistrate No.II,
Sattur.



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G. ILANGO VAN, J

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