BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 11.03.2023

CORAM

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CRL OP(MD)No.20254 of 2021
and
Crl.M.P(MD)Nos.11484 and 11485 of 2021

J.Justin ... Petitioner

Vs

1.S.Swaminathan

2.J.Johnson ... Respondents

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in C.C.No.53 of 2021, on the file of the Judicial Magistrate, Devakottai, Sivagangai District and quash the same.

For Petitioner : Mr.Issac Mohanlal
Senior Counsel
Assisted by Mr.K.Ragatheesh Kumar

For Respondents : Mr.P.Gokulnath

ORDER

Seeking to quash the final report in C.C.No.53 of 2021 on the file of the Judicial Magistrate, Devakottai, Sivagangai District, the present petition is filed by the petitioner/accused No.2.

2. The case of the prosecution, in a nutshell, is as follows:-

The first respondent/complainant and the first accused Johnson are friends. The first accused used to borrow amounts from the complainant as hand loan. During November 2019, he requested the complainant to lend a sum of Rs.20,00,000/- to meet his urgent family expenses and also for developing his business. He promised to repay the same together with interest within 10 months. The first respondent/ complainant paid the amount as indicated below:-

Sl. No	Date	amount
1.	16.12.2019	Rs.2,00,000/-
2.	28.12.2019	Rs.2,00,000/-
3.	03.01.2020	Rs.50,000/-
4.	04.01.2020	Rs.50,000/-
5.	30.01.2020	Rs.6,00,000/-
6.	14.02.2020	Rs.5,00,000/-

The accused handed over three cheques bearing Nos.000091, 00092 and 000093 for a sum of Rs.16,00,000/-. When the cheques were presented for collection on 17.11.2020, the same were returned for the reason 'signature differs'. Therefore, the first accused got all those cheques back from the complainant and paid a sum of Rs.2,00,000/- in cash and for the balance amount of Rs.14,00,000/- he issued the following post-dated cheques drawn on Union Bank of India:-

Sl. No	Date	Cheque Nos	amount
1.	15.12.2020	000026	Rs.2,00,000/-
2.	28.12.2020	000027	Rs.2,00,000/-
3.	08.01.2021	000025	Rs.4,00,000/-
4.	31.01.2021	000030	Rs.5,00,000/-
5.	31.01.2021	000031	Rs.1,00,000/-

When the cheques were presented for collection by the complainant through his bankers viz., Lakshmi Vilas Bank on 09.03.2021, all the cheques were returned for the reason 'payment stopped by drawer'. He therefore issued a statutory notice dated 31.03.2021 which was returned with the postal endorsement 'left'. Therefore, the complainant/first respondent lodged a private complaint under Section 200 Cr.P.C., against the petitioner for an offence under Section 138 of Negotiable Instrument Act.

3. Mr.Issac Mohanlal, learned Senior Counsel assisted by Mr.K.Ragatheesh Kumar, learned counsel appearing for the petitioner would contend that the petitioner had not signed any of the cheques given by his brother, the second respondent herein and that since he is holding a joint account with his brother, the private complaint has been lodged against him also. He also relied on the decision of ***Alka Khandu Avhad vs Amar Syamprasad Mishra and another*** reported in ***(2021) 4 SCC 675*** and contended that it is a person, who is the signatory to the cheque, can be held responsible, if the cheque is not honoured by the bank.

4. Per contra, Mr.P.Gokulnath, learned counsel for the respondents contended that since the present petitioner is holding a joint account with the first accused, he must be held responsible under Section 138 of Negotiable Instruments Act.

5. Even as per the averment of the first respondent/complainant

the present petitioner did not borrow any amount from him. It is his brother, who borrowed amount and handed over the cheques to him on various dates. When the cheques were presented, they were returned for the reason ' payment stopped by drawer'. Though the present petitioner is a joint holder of the bank account, he was not signatory to the cheque. At this juncture, it is appropriate to extract Section 7 of the NI Act, which reads as follows:-

> *7. "Drawer", "Drawee".—The maker of a bill of exchange or cheque is called the "drawer"; the person thereby directed to pay is called the "drawee". "Drawee in case of need". —When in the bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need such person is called a "drawee in case of need".*
>
> *"Acceptor". —After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor".*
>
> *"Acceptor for honour". — When a bill of exchange has been noted or protested for non-*

acceptance or for better security, and any person accepts it supra protest for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour".

"Payee". —The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee".

6. In the instant case, the petitioner is not the drawer of the cheque and therefore, as per Section 138 of NI Act, he cannot held liable. Accordingly, the final report in C.C.No.53 of 2021, on the file of the learned Judicial Magistrate, Devakottai, Sivagangai District, is quashed as against the present petitioner alone and this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

11.03.2023

Index :Yes/No
Internet :Yes/No
NCC :Yes/No
cp

To

The Judicial Magistrate,
Devakottai, Sivagangai District

R.HEMALATHA,J.

cp

CRL OP(MD)No.20254 of 2021

11.03.2023