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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 28/06/2023

CORAM

The Hon'ble Mr.Justice **G.ILANGO VAN**

Crl.OP(MD)No.21437 of 2022

and

Crl.MP(MD)Nos.15058 and 15060 of 2022

L.N.Nithyanantham : Petitioner

Vs.

Dr.S.Ramadoss : Respondent

PRAYER:-Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records in STC No.222 of 2022 pending on the file of the Judicial Magistrate No.1, Pudukkottai and quash the same.

For Petitioner : Mr.P.Chandrasekaran

For Respondent : Mr.N.Mohideen Basha

O R D E R

This criminal original petition has been filed seeking quashment of the case in STC No.222 of 2022 pending on the file of the Judicial Magistrate No.1, Pudukkottai.

**2. The facts in brief:-**

The respondent filed a complaint for the offence punishable under section 138 of the Negotiable Instruments Act against this petitioner before the trial court with the following allegations:-

The complainant and the accused were known to each other. The accused used to proclaim that he is known to several persons in the Government Department at various levels. Knowing that the complainant's relatives are jobless, he promised to secure jobs for them. Towards that he received Rs.1.52 Crores for securing job in various Departments, but later failed. Over which, several criminal cases have been registered and those cases were also ended.

3. On 15/01/2022 in the presence of some important persons, compromise talk was conducted, in which, the accused agreed to pay Rs.1.25 Crores towards discharge of the above said amount. So, he issued a cheque bearing No.615443 drawn on Indian Bank, Rajagopalapuram branch, Pudukkottai, on that date itself, which was, dated 30/03/2022 and that was presented for payment on the very



4. Summon has been issued to this petitioner, on taking cognizance. On the side of the complainant, he himself was examined as PW1 and on his side, 5 documents were marked. Though the matter was posted for cross examination, the petitioner did not cross examine the complainant. So, it was recorded as such by the trial court. It is, dated 06/10/2022. This quash petition has been filed, on 07/11/2022.

6.The issue involved in this matter has a long history.

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8.Per contra, it is contention on the part of the respondent that the facts that have been set out by the petitioner in the petition, cannot be a matter for consideration by this court while exercising the jurisdiction under section 482 Cr.P.C, since factual issues are involved, as law is declared by the Hon'ble Supreme Court in the case of ***Rathish Babu Unnikrishnan Vs. State (Govt. of NCT of Delhi) (CDJ 2022 SC 491)***, that the factual issues cannot be taken into consideration by this court.

9.But in response to the above said argument, the learned counsel appearing for the petitioner would submit that the dates and events set out by him, will prove the non-probability or improbability of the issuance of cheque and the liability between the parties. That must be considered by this court.

10.Now, with this argument in background, let us go to the background facts. According to the petitioner, he and his father introduced one K.Veerachamy in 2014 to the respondent. He borrowed a sum of Rs.30,00,000/- from him and at that time, the respondent insisted the



petitioner to give blank cheque as guarantee for the amount lent by him to the above said Veerachamy. So, as a security guarantor a blank cheque was issued in 2018. But however, a false complaint has been given as if the petitioner promised to arrange a job for various relatives, on 01/06/2020 before DCB, Pudukottai as if he has received Rs.1.50 crores. During the course of enquiry by the DCB, the petitioner was forced to sign in the compromise deed, dated 02/06/2020. As per the above said forcible compromise deed, dated 02/06/2020, the respondent was giving pressure through DCB, Pudukottai to pay Rs.1.40 Crores. To avoid any further problem, he issued a demand draft for Rs.8,00,000/-. That was encashed by the respondent.

11. When pressure was made for repayment of the remaining amount, he filed CrI.OP(MD)No.1776 of 2021 praying for direction to the DCB not to harass the petitioner. After hearing both sides, by judgment, dated 30/03/2021, the compromise deed was quashed. But the DGP was directed to initiate Departmental proceedings against the Inspector of Police, DCB, Pudukottai.



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12. During the pendency of the above said petition before this court, the respondent filed CrI.MP No.361 of 2021 before the Judicial Magistrate No.1, Pudukottai, for direction to register a case, on his complaint, dated 29/12/2020. After enquiry, the above said enquiry was closed, on 07/05/2021 on the basis of the order passed by this court in CrI.OP(MD)No.1776 of 2021. So against the order that has been passed in CrI.OP(MD)No.17766 of 2021, the respondent preferred SLP before the Hon'ble Supreme Court in SLP (CrI.) No.8637 of 2021. That was dismissed by the Hon'ble Supreme Court, by order, dated 10/12/2021.

13. Suppressing all these facts, the complaint has been filed as if the petitioner issued a cheque, on 15/01/2022 in the presence of some persons, which is dated 30/03/2022; He was not available in Pudukottai, on 13/01/2022; But by using the blank cheque given as a security some four years back, this petition has been filed; The amount borrowed by Veerachamy has been repaid; The statutory notice, which was issued by the petitioner was suitably replied.



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14.The dates and events:-

1.Veerasamy obtained loan of Rs. 30,00,000/-.

2.In 2018, cheque has been issued.

3.01/06/2020, complaint was given before the DCP, Pudukkottai.

4.on 02/08/2020, compromise deed was executed and Demand draft of Rs.8,00,000/- was paid.

5.Crl.OP (MD) No.1776 of 2021 filed By order, dated 30/03/2021, the compromise deed was quashed.

6.Crl.MP No.361 of 2021 filed before the Judicial Magistrate No.1, Pudukottai, for direction to register a case on the basis of the complaint, dated 21/12/2020.



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7.Enquiry was closed, on 07/05/2021.

8.SLP was filed by the respondent.

***It was dismissed, on 10/12/2021 in SLP No.
8637 of 2021.***

***9.The complaint filed as if the
petitioner issued cheque, on 15/01/2022,
dated 30/03/2022.***

These are the chronological events of the issue.

15.By pointing out the above said dates and events, the learned counsel appearing for petitioner would submit that absolutely, it is improbable for the petitioner to have issued the present cheque for the amount in it. Since, not only before this court, but also before the Hon'ble Supreme Court, the respondent failed, it cannot be expected a person, who succeeded in the criminal litigations will ever enter into a compromise with the failed party agreeing to pay the amount. So this, according to the learned counsel appearing for the petitioner, does not stand to reason and logic. This



16. Now coming to the case of the respondent, it has been submitted that what was going on before this court and in the SLP before the Hon'ble Supreme Court is only with regard to the criminal liability of the petitioner in cheating him. So far as the section 138 of the Negotiable Instruments Act is concerned, it is a civil liability coupled with the criminal liability. It is not barred by any law and simultaneously, he can prosecute both the cases. According to him, absolutely, there is no improbability for him. Even if the criminal liability failed, liability on the basis of the cheque will remain and this factual aspect should not be taken into account at this stage. Instead, it must be left to the trial court to discuss the matter. The petitioner can very well make up his defence before the trial court and get an order of acquittal, if so, he deserves.

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Vs. The State (Govt. of Nct of Delhi) and another [CDJ 2022 SC 491] and more particularly, he would rely upon the following passages:-

"16.The proposition of law as set out above makes it abundantly clear that the Court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when in the factual controversy is in the realm of possibility particulars because of the legal presumption as in this matter. What is also of note is that the factual defence without having to adduce any evidence need to be an un-impeaching quality, so as to altogether disprove the allegations made in the complaint.

17.The consequence of scuttling the criminal process at a pre-trial stage can be grave and irreparable. Quashing proceedings at preliminary stage will result in finality without the parties



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having had an opportunity to adduce evidence and the consequence then is that the proper forum I.e., the trial court is ousted from weighing the material evidence. If this is allowed, the accused may be given an unmerited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption.

So, according to him, when the trial has already commenced, it must be taken in its logical conclusion. No interference is called for at the hands of this court. To show the same, he has also produced the depositions of PW1 and record of proceedings of the trial court, which shows that PW1 was examined in chief and 5 documents were marked on his side and the petitioner sought time for



cross examination. But without seeking examination, this petition has been filed.

18. So with these defences in the background, let us go further. Whether this is the fittest case to entertain the previous proceedings and the present quash proceedings. The reason for me to entertain this petition and hear the matter is that it is not a simple issue between two private parties over the liability issue of the cheque, etc, but it involves sanctity of the court proceedings. So this court thought it fit to entertain this petition and dispose the same on its own merit, even though, PW1 was examined in chief and documents have also been marked.

19. For that purpose, let us go back to the original complaint given by the petitioner against the respondent, which is, dated 01/06/2020, which was the subject matter of the criminal original petitions, SLP, etc, wherein it has been stated that the petitioner herein promised to secure job for the respondent's daughter-in-law and others, received Rs.1,52,00,000/-, later cheated and failed.



20.As mentioned above, compromise was allegedly entered, on 02/06/2020. It was put to challenge in CrI.OP(MD)No.1167 of 2021. With the very same averments, the respondent filed Criminal Miscellaneous Petition before the Judicial Magistrate No.1, Pudukkottai seeking direction to the police to register a case. The date of complaint is, dated 10/03/2021. The subject matter was already seized by this court in CrI.OP(MD)No.1167 of 2021. The matter was adjourned to 12/03/2021. In the meantime, the above said petition was filed by the respondent before the Judicial Magistrate No.2, Pudukkottai. Nothing has been stated about the pendency of the CrI.OP(MD)No.1167 of 2021 before this court. On the date of hearing namely on 08/02/2021 itself, the respondent appeared through his counsel. So, he was aware of the proceedings before this court.

21.By pointing out this, the learned counsel appearing for the petitioner would submit that it is a clear case of perjury, for which, action must be initiated against the respondent. But it comes beyond the scope of the petition. So when that argument was advanced, I told the learned counsel appearing for the



petitioner that such a course is not available for this petitioner and they can very well prosecute the same separately. More particular, the Advocate, who appeared for the respondent before this court was also appearing for the respondent before the Judicial Magistrate Court. So, this sort of activity ought to have been avoided by the respondent.

22. So when the trial court namely the Judicial Magistrate No.2, Pudukottai, without knowing the pendency of the proceedings before this court passed an order dated 23/03/2021, directing the DCP, Pudukottai to enquiry and file a report. In the meantime, on 12/03/2021, the matter was heard by this court in Cr1.OP(MD)No.1167 of 2021 and an order was passed, on 30/03/2021. After elaborate discussion only, the compromise deed dated, 21/06/2020 was quashed and disciplinary proceedings were ordered to be initiated against the police officials. As mentioned above, SLP was preferred and that was also dismissed. On 07/05/2021, the Inspector of DCP, Pudukottai filed a report before the Judicial Magistrate No.2, Pudukottai. Because of the order passed by this court, in the above said Criminal Original Petition, further action was dropped.



23. Not stopping with that, another attempt was made by the respondent by filing CrI.OP(MD)No.8912 of 2021 before this court seeking a direction to DCP, Pudukottai, to register a case on the basis of the order passed by the Judicial Magistrate No.2, Pudukottai, in CrI.MP No.361 of 2021. That petition was filed in the meantime in June 2021, after dismissal of CrI.OP(MD)No.1776 of 2021 stating that the cause of action in both matters are entirely different, that was also resisted by the petitioner. Subsequent to that, on 10/12/2021, SLP filed by the respondent came to be dismissed, of course, to invoke the civil remedy in accordance with law.

24. The matter did not end with that. In spite of specific liberty granted to the respondent to invoke the civil proceedings. After dismissal of SLP, CrI.OP(MD)No. 8912 of 2021 was taken up for hearing, on 20/01/2022. On the basis of the Hon'ble Supreme Court order, the petition filed by the respondent was dismissed. A specific ground was taken to the effect that subsequent development was not taken into account by the Supreme Court, since the Judicial Magistrate No.2, Pudukottai,



passed an order only, on 23/03/2021. But that contention was rejected, ultimately, it was dismissed. No further action was taken by the respondent. After two months, the present cheque alleged to have been issued by the petitioner on the basis of the compromise talk that was undertaken between the parties at the intervention of the elders. The above said cheque was presented for payment and dishonoured. Statutory notice was issued by the respondent stating that subsequent to the above said proceedings, on 15/01/2022 in the presence of one Selvaraj and Neelamanian, again compromise talk was undertaken. At that time, this petitioner alleged to have agreed to return Rs.1,25,00,000/- within 2-1/2 months. Thereafter, for the above said discharge, he issued a cheque dating the same as 30/03/2023. That was returned due to insufficient funds. So, he filed the present complaint. Here comes the difficulty. As mentioned above, Cr1.OP(MD)No.8912 of 2021 was taken up for hearing, on 20/01/2022. Had it been done, on 15/02/2022, certainly the respondent would have brought to the notice of this court the above said compromise. But nothing was stated before this court. It has been simply stated that the order of reference was made by the Judicial Magistrate



No.2, Pudukkottai in Crl.MP No.361 of 2021, on 23/03/2021. As mentioned above, the non-disclosure of the particulars and important fact as early as before this court does not answer the reason and logic. So absolutely, this is the improbability and inherently. Absolutely, that has been now pleaded is inherently improbable and not believable also.

25.When the facts narrated by the complainant does not answer the reason and logic or satisfying the thinking of an ordinary prudent man, I am of the considered view that the petition is very well maintainable. Only to this circumstances, the Hon'ble Supreme court in the famous case of **Bajanlal** has stated that improbability may also be taken into account for quashing the proceedings.

26.Now coming to the final portion of the order, in view of the above said discussion, in my considered view, nothing more is required to be discussed. The proceedings is nothing, but clear abuse of the process of the court. No doubt that some sort of transaction went between the parties. That cannot be completely ruled out.



But at the same time, to vindicate the grievance or redress the same, the course adopted by the respondent is not a legal. He ought to have pursued the matter legally by bringing the true facts. He wanted to twist the facts and also wanted to use the court proceedings to advance his case. Having failed in more than one time, he pursued the matter. As mentioned earlier, he ought to have pursued the matter within the legal frame work. But having failed, he wanted to play the game by filing repeated complaints and petitions, etc. This attitude should not be entertained. I conclude this order by warning the respondent not to indulge in such activities in future. He has to pursue the matter legally, since already liberty was granted to him by the Hon'ble Supreme Court. For having chosen the wrong pathway, he suffered a lot and still suffering. This can be a lesson to all, who wants to use the court proceedings to vindicate their grievance. The petitioner is equally not coming to the court with clean hands. He also failed to state that the blank cheque under dispute was issued as security to one Veerasamy in CrI.OP(MD)No.1776 of 2021.



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27. In the result, this criminal original petition is **allowed**. The case in STC No.222 of 2022 on the file of the Judicial Magistrate No.1, Pudukkottai, is hereby quashed. Consequently, connected Miscellaneous Petitions are closed.

28/06/2023

Index:Yes/No
Internet:Yes/No

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To,

The Judicial Magistrate No.1,
Pudukkottai.



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G.ILANGOVAN, J

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