IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.15139 of 2024
& Crl.M.P.No.9250 of 2024

V.Ramesh ... Petitioner/Accused

/versus/

Venkateswarlu Kapuluru ... Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in complaint dated 05.03.2024 filed by respondent and registered in C.C.No.45 of 2024 on the file of the Hon'ble Judicial Magistrate, Fast Track Court, Alandur, Chennai and grant such other equitable relief.

For Petitioner : Dr.S.S.Swaminathan

For Respondent : Mr.R.Vijayaraghavan.

O R D E R

This Criminal Original Petition is filed to quash the criminal prosecution initiated under Section 138 of N.I on the ground that the cheques given to the complainant as a security drawn from the account maintained at

State Bank of Travancore in the year 2017 been misused and presented for collection, on 26.10.2023. After State Bank of Travancore got merged with State Bank of India in the year 2019, the cheque issued by State Bank of Travancore has become a stale cheque, hence the complaint under Section 138 of N.I Act is not maintainable.

2. The Learned Counsel appearing for the petitioner submits that admittedly this cheque was not issued to discharge any liability of the drawer. Even according to the complainant one M/s.Crescentz square which has borrowed money from the petitioner failed to repay the money and the subject cheques were given by the petitioner herein on 16.03.2017 promising that, in case M/s.Crescentz square failed to pay the loan amount of Rs.30,00,000/- the cheques can be utilised for recovery. Therefore, the Learned Counsel for the petitioner submits that admittedly when there is no liability to repay, but cheque was given as security for the loan advanced to M/s.Crescentz square, criminal complaint under Section 138 of N.I Act cannot be filed, more so, for the very same amount, the complainant has initiated recovery proceedings against M/s.Crescentz square.

3. The Learned Counsel further submitted, this petitioner has filed suit in O.S.No.3475 of 2024 for redemption in respect of property mortgaged for the loan of Rs.40 lakhs and same is pending before VI Additional City Civil Court, Chennai.

4. The Learned Counsel appearing for the respondent/complainant submits that the petitioner approached the complainant for financial facility to him and his son Abishek. On 16.03.2017, a sum of Rs.26,30,000/- was paid into the account of Crescentz square by RTGS as loan and a sum of Rs.3,70,000/- paid in cash to the accused herein to meet the mortgage expenses. Thus, the complainant paid Rs.30 lakhs to the accused and to discharge the said debt, two cheques were given to the complainant. When Crescentz square failed to make payment, as per the promise made by the petitioner/accused, the cheque given by the petitioner were presented for collection. Therefore, the Learned Counsel for the respondent submitted that it is the liability undertaken by the petitioner to repay is now sought to be enforced by way of subject cheque.

5. On perusing the complaint, statutory notice and the rejoinder given by the petitioner it is obviously clear that a sum of Rs.26,30,000/- was credited into the account of Crescentz square and not to this petitioner though, the complainant say that Rs.3,70,000/- was paid in cash to meet out the mortgage expenses of the petitioner/accused. It is brought to the notice by the Learned Counsel for the petitioner that the cash paid for mortgage expense was separate transaction in respect of loan of Rs.40 lakhs given by complainant and for which, the petitioner has mortgaged his property. This petitioner has filed a redemption suit. Thus, the said mortgage is subject matter of suit pending in O.S.No.3475 of 2024. Therefore, the alleged lending of cash of Rs.3,70,000/- to meet out the mortgage expenses cannot be linked with the loan alleged to have been received by Crescentz square.

6. Further, it is the admitted case of the complainant that the subject cheques were given to him in the year 2017, at that time when the loan of Rs.26,30,000/- advanced to Crescentz square. In the complaint, it is stated that the accused promised that if the Crescentz square failed to pay the debt, this cheque can be utilised and encashed. For a loan availed by Crescentz square, the cheques given by the accused can utmost be termed as a security and not acknowledgement of any liability.

7. Therefore, this Court is of the view that the subject cheques cannot be used to prosecute the petitioner under Section 138 of N.I Act when admittedly this cheques were not given by the petitioner/accused to discharge the liability. There is no evidence to show that the petitioner herein has borrowed money from the complainant/respondent herein to discharge the same through these two cheques. While the complainant has already instituted proceedings under Section 138 of N.I Act, against Crescentz square for the loan availed, there cannot be another prosecution under Section 138 of N.I Act against the petitioner who has given the subject cheques as security for the very same transaction.

8. Hence, this ***Criminal Original Petition is allowed.*** The complaint in C.C.No.45 of 2024 on the file of the Judicial Magistrate, Fast Track Court, Alandur, Chennai is hereby quashed. Consequently, connected Miscellaneous Petition is closed.

30.08.2024

Index : Yes/No.
Neutral Citation : Yes/No.
bsm

To:-

The Judicial Magistrate, Fast Track Court, Alandur, Chennai.

Dr.G.JAYACHANDRAN, J.

bsm

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