IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.10.2024

Pronounced on : 25.11.2024

CORAM

The Hon`ble Mr. Justice P.DHANABAL

Crl. O.P. No.21283 of 2022
and Crl. M.P. No.13865 of 2022

Prashanth.S
Partner of M/s. Krish Associates .... Petitioner.

vs.

Punjab National Bank
represented by Vikash Kumar Agarwal ... Respondent.

PRAYER: The Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code praying to call for records relating to C.C. No.21 of 2020 on the file of the learned Metropolitan Magistrate, Fast Track Court No.I, Allikulam building, Egmore, Chennai and to quash the same..

For petitioner	:	M/s. C.S. Vedavalli
For Respondent	:	Mr. M.L. Ganesh

ORDER

This Criminal original petition has been filed to quash the proceedings in C.C. No.21 of 2020 on the file of the learned Metropolitan Magistrate, Fast Track Court No.I, Allikulam @ Egmore, Chennai.

2. **<u>The short facts of the case necessary to dispose of this petition are as follows:-</u>**

The respondent herein has filed a cheque complaint against the petitioner herein stating that the petitioner is the partner of his concern M/s. Krish Associates and he is looking after day to day business activities and actively involved in managing all the affairs of his partnership concern M/s.Krish Associates including the dealings with the complainant bank. The accused approached the bank and availed term loan of Rs.400 lakhs, cash credit of Rs.200 lakhs from the complainant bank against hypothecation of goods purchased or to be purchased by the complainant bank's loan as per the term loan and cash credit agreements executed on 08.02.2018. The accused was irregular in repayment as per the terms and conditions of sanction and the various loan agreements executed by him and the complainant bank also reminded the accused about the default in repayment and the accused requested to present the cheques already given as security at the time of sanction and loan agreement. The cheque was given for a sum of Rs.40 lakhs in favour of the complainant bank for part payment of the debt liability. As per the terms of sanction, the accused had to deposit post dated cheques as security with the complainant bank to be presented if the accused failed to repay the interest on due date or as and when asked for complainant bank to keep the credit facility within the drawing powers and on failure to pay EMIs of Term loan on due dates. The complainant bank believing the representation of the accused, presented the said cheaue bearing number 003948 dated 29.06.2019 for collection and encashment with their bankers namely Axis Bank, K.K. Nagar Branch. The cheque was returned as dishonoured by their banker on the ground that 'payment stopped by drawer' and the said fact was intimated to the accused as per the return memo dated 01.07.2019 with statutory notice dated 20.07.2019. The accused managed to return the notice and thereafter, he did not repay the amount. Therefore, the complainant filed a cheque complaint. Now the said complaint has been challenged.

3. The learned counsel appearing for the petitioner would submit that the proceedings initiated against the petitioner herein is invalid in law and the allegations made against the accused, does not speak about any offence. The complaint initiated by the bank as a banker under Negotiable Instruments Act was not issued to the banker and the cheque in question has been issued by the accused in the name of M/s.Krish Associates, not in the name of the complainant bank. Therefore, the complainant bank cannot file and maintain a complaint as he is not the account holder. It is specific terms of sanction by depositing 6 post dated cheques is only for availing inland letter of credit, which has not been availed by the accused. The petitioner intended to avail the cheque facility and had given six cheques but the said cheques were not the cheques, which are the subject matter of the complaint. The alleged cheque of dishonour dated 29.06.2019 had been issued to the petitioner by the Axis Bank, K.K. Nagar Branch only on 17th May 2019 and the same could not have been deposited with the complainant on the date of

sanction of the loan namely 8th February 2018 or holder in due course of the cheque. Therefore, the complaint against the petitioner is liable to be quashed, as there is no any offence as per the provisions of Negotiable Instruments Act.

4. The learned counsel appearing for the petitioner has relied on the following judgments:

(i) ***Jayakumar v. Devi Vilasom Kettuthengu Sangham - Kerala High Court.***

(ii) Arvind Singh Rajpoot vs. M/s. Intersight Holidays Pvt. Ltd - Kerala High Court in Crl. M.C. No.983 of 2018.

5. The learned counsel appering for the respondent would submit that the petitioner has come with tainted hands by filing this petition with concocted statement. The petitioner and his wife had involved in various criminal activities by offering dubious collateral security of immovable property to avail huge credit facilities from the respondent bank, Canara

Bank as well as South Indian Bank Ltd., In fact, M/s. Krish Associates, a partnershp firm represented by its partner, the petitioner and his wife Mrs.Nithya Prasanth had originally approached the respondent bank by projecting that they are carrying on work contracts and civil engineering services and they are getting more orders from their customers and required financial assistance from the respondent bank in order to expand their business operation. Thereby, the respondent bank had sanctioned term loan to the tune of Rs.4 crores and letter of credit for Rs.1.50 crores vide sanction letter dated 08.02.2018 with condition of hypothecation of stocks and book debts created out of Bank Finance and mortgage of property belonging to the Prashanth guaranteed by other two persons. The petitioner along with his wife also executed loan security documents on 08.02.2018 to secure repayment of loan amount to the tune of Rs.5.5 crores. The petitioner and his wife stood as guarantors for the loan liability of M/s.Krish Associates.

5.1. The learned counsel appearing for the respondent further contended that the petitioner and his wife had also approached the bank for availing housing loan facility against the security of immovable property and the bank had sanctioned a sum of Rs.74,46,000/- on 07.06.2018 to the petitioner and his wifef. Again, the petitioner approached the bank for cash credit facility to keep sufficient stocks namely steel, cement, bricks, ferrous and other minerals and bank had sanctioned cash credit facility of Rs.2 crores son 26.06.2018. For that also, the petitioner along with his wife, had executed loan security documents. Totally a sum of Rs.8,24,46,000/- of credit facilities has been extended on the security of the properties. The respondent bank also visited the office of M/s. Krish Associates, wherein no business operations were taken place and also the said M/s.Krish Associates failed to pay the amount as per the agreement and it has been slipped into NPA category. For the repayment of loan liability, the petitioner had issued the said cheques for the loan amount of the borrower M/s.Krish Associates with the respondent bank. Now, the petitioner has taken a different view and the petitioner also admitted the issuance of cheques. Therefore, the cheques were issued for the debts secured by the petitioner. When the cheque was presented for collection, it was returned and even after notice, the petitioner has not repaid the loan amount. Thereby, he filed a complaint. Now the case is pending and it is the matter of trial to be decided by the trial Court and therefore, the present petition is liable to be dismissed.

6. Heard both sides. Perused all the materials available on record.

7. In this case, according to the petitioner, the complainant has filed a cheque complaint stating that the petitioner issued cheque for a sum of Rs.40 lakhs and the same was presented for collection and it was returned as the 'payment stopped by the drawer' and after issuance of notice, he managed to return the notice and failed to repay the amount, thereby he lodged the complaint.

8. According to the petitioner, the cheque was not issued in the name of the complainant bank and the cheque is in the name of M/s.

Krish Associates and therefore, the petitioner cannot present the cheque as if either payee of the cheque or the holder of the cheque. Therefore, no offence is made out as against this petitioner.

9. This Court carefully perused the entire records. It is an admitted fact that the cheque was not issued in the name of the complainant, whereas the cheque was issued in the name of M/s.Krish Associates. The said cheque was presented by the complainant through his bank and thereafter he sent a notice. Even as per the notice, there is no mention that the cheque was issued in the name of complainant and it was issued in the name of M/s.Krish Associates. The learned counsel for the respondent also has not disputed that the cheque was issued in the name of M/s.Krish Associates. But according to the respondent, the cheque was issued for security for the loan facility availed by the petitioner.

10. At this juncture, the learned counsel appearing for the

petitioner relied upon judgments of Kerala High Court in (i) ***Jayakumar v. Devi Vilasom Kettuthengu Sangham - Kerala High Court and (ii) Arvind Singh Rajpoot vs. M/s. Intersight Holidays Pvt. Ltd - Kerala High Court in Crl. M.C. No.983 of 2018,*** wherein the High Court of Kerala has categorically held in paras 7 to 10 as follows:-

> "7. Going by Section 138 of Negotiable Instruments Act, the statutory language is that where any cheque drawn by a person on the account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or liability, is returned by the bank unpaid due to want of sufficient funds, he shall be deemed to have committed an offence and shall be punished accordingly. In short, the cause of action enabling to file a complaint arises in favour of the payee when any cheque drawn by a person for payment of any amount to his favour is dishonoured for want of sufficient funds.
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> 8. According to Section 142 of the Negotiable Instruments Act, notwithstanding anything contained in the Code of Criminal Procedure, 1973, no Court shall take cognizance of any offence punishable under Section 138 of the Negotiable Instruments Act except upon a complaint, in writing, made by the payee or as the case may be, the holder in due course of the cheque. Thus, the payee or the holder in due course alone has the locus standi to file a complaint under Section 142 of the Negotiable Instruments Act.
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> 9. The above view is further fortified by Section 138(b) of the Negotiable Instruments Act. According to Section 138(b) of the Negotiable Instruments Act, the payee or the holder in due course of the cheque, as the case may be, shall send a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid. Thus, the sub-section (b) clarifies that the payee or the holder in due course alone has the right to

> proceed against the drawer for the commission of the offence under Section 138 of the Negotiable Instruments Act. According to Section 7 of the Negotiable Instruments Act, the person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called 'payee'. Similarly, according to Section 9 of the Negotiable Instruments Act, "Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or indorsee thereof, if payable to order before the amount mentioned in it became payable and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.
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> 10. The proposition that can be culled out from the mandatory language under Section 142 and 138(b) of the Negotiable Instruments Act is that the locus standi to file a complaint under Section 138 of the Negotiable Instruments Act is given to the payee or holder in due course of the dishonoured cheque only and no court shall take cognizance of the offence punishable under Section 138 of the Negotiable Instruments Act, unless the complaint is filed by the payee or holder in due course of the dishonoured cheque".

11. In case of ***Arvind Singh Rajpoot v. M/s. Intersight Holidays Pvt. Ltd.,*** held that a complaint alleging commision of offence punishable under Section 138 of the Negotiable Instruments Act shall be filed either by the 'payee' or by the 'holder in due course' of the said cheque and no other person entitled to lodge a complaint and the Court shall take cognizance acting on a complaint in writing filed by the 'payee' or 'holder in due course'.

12. In this case, the complainant is not neither a 'payee' nor a 'holder in due course' of the disputed cheque and the cheque is in the name of M/s.Krish Associates, where the petitioner is a partner. Therefore, by applying the above proposition of law, the complaint given by the complainant against the petitioner is not maintainable under Section 138 and 142 of the Netotiable Instruments Act. The trial Court has not considered the above said aspects and has taken cognizance. Therfore, the order of taking cognizance based on the present complaint is abuse of process of law and is not in accordance with law and hence, the present complaint is liable to be quashed.

13. In the result, the Criminal Original Petition is allowed and the pending proceedings in C.C. No.21 of 2020 on the file of the learned Metropolitan Magistrate, Fast Track Court No.I, Allikulam building, Egmore, Chennai are quashed. No costs. Consequently, the connected miscellaneous petition is closed.

25.11.2024
[1/2]

index: Yes/No
Internet: Yes/No
Speaking/Non Speaking order
mjs

P.DHANABAL,J

mjs

To

1. The Metropolitan Magistrate, Fast Track Court No.I, Allikulam building, Egmore, Chennai.
2. The Public Prosecutor, High Court, Madras.

CRL O.P. No.21283 of 2022

25.11.2024
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