IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:19.03.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P No.18789 of 2023
and
Crl.MP.Nos.12546 & 12548 of 2023

S.Senthil Kumar ...Petitioner/Accused

.Vs.

G.Vignesh Rajan .. Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in relating to the complaint in connection with the STC No.7175 of 2022 on the file of XXVI Metropolitan Magistrate Court, Egmore.

For Petitioner : Mr.V.Sakkarapani

For Respondent : Mr.C.Senapathi
Mrs.Rohini

ORDER

This petition has been filed challenging the proceedings in STC No.7175 of 2022, pending on the file of XXVI Metropolitan Magistrate Court, Egmore.

2.The respondent has filed a private complainant against the petitioner for offence under Section 138 of the Negotiable Instruments Act, 1881, on the ground that the respondent has lent a sum of Rs.10,00,000/- to the petitioner on 30.4.2016 as hand loan with interest at the rate of 3% per month. The further case of the respondent is that the petitioner did not repay back the amount inspite of repeated requests and demands. Ultimately, the petitioner had issued a cheque in favour of the respondent to the tune of Rs.46,50,885.90. When this cheque was presented for collection, it was returned with an endorsement "account inoperative". After service of statutory notice, the private complaint came to be filed before the Court below.

3.When the matter came up for hearing on 12.3.2024, this Court passed the following order:

> The admitted principal amount is Rs.10 lakhs.
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> 2.According to the complainant, the hand loan was given to the petitioner with interest at the rate of 3% per month on 30.4.2016. Further according to the complainant, the cheque was given by the petitioner on 15.10.2020 for a sum of Rs.46,50,885.90 ps.
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> 3.The respondent has to satisfy this Court as to how he arrived at the said sum of Rs.46,50,885.90 Ps when the principal amount itself was only Rs.10 lakhs.
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> 4.Post on 19.3.2024.

4.Heard Mr.V.Sakkarapani, learned counsel for the petitioner and Mr.C.Senapathi, learned counsel for the respondent.

5.The main ground that was raised by the learned counsel for the petitioner is that the admitted case of the respondent is that the petitioner had borrowed a sum of Rs.10,000,00/- in the year 2016. When that is so, there is no question of the respondent claiming a liability of Rs.46,50,885.90 in the year 2020. Therefore, according to the petitioner, there was no legally enforceable liability to the tune of Rs.46,50,885.90 from the petitioner.

6.In reply the above submission, the learned counsel for the respondent submitted that the respondent had calculated 3% compounding interest from the year 2016 till the year 2020 and thereby, the petitioner is liable to pay a total sum of Rs. 46,50,885.90.

7.There is no dispute on the facts and hence, this Court can go by the stand taken by the respective parties and decide this quash petition.

8. The agreement between the parties is that the petitioner will repay back the principal amount of Rs.10,00,000/- with 3% interest per month from 30.4.2016. If this is the agreement, the petitioner is liable to pay 3% interest from 30.4.2016. The interest per month works out to Rs.3000/-. Till 15.10.2020, there

are 53 months and if this interest is calculated for 53 months, it comes to Rs.1,59,000/-. If this amount is added to the principal amount of Rs.10,00,000/- it comes to Rs.11,59,000/- from 30.4.2016 to 15.10.2020.

9.It seems that the respondent has calculated compounding interest. Thereby, the respondent is claiming an exorbitant interest in this case and as a result, for the principal amount of Rs.10,00,000/- the respondent is claiming an amount of Rs.46,50,885.90. This interest that has been charged by the respondent is clearly prohibited under the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003. Section 3 of the Act clearly states that no person shall charge exorbitant interest to any loan advanced by him. Exorbitant interest has been defined under Section 2(3) of the Act.

10.In the light of the above discussion, it is clear that the amount that is claimed by the respondent against the petitioner is not a legally enforceable debt. Therefore, the complaint does not satisfy the requirements of Section 138 of the Negotiable Instruments Act, 1881. The fact that the respondent has filled up an amount of Rs.46,50,885.90 in the cheque shows that the respondent has misused the cheque given by the petitioner. The continuation of the proceedings will result in an abuse of process of law which requires the interference of this Court.

11.In the result, the proceedings in STC No.7175 of 2022, pending on the file of XXVI Metropolitan Magistrate Court, Egmore, is hereby quashed and this criminal original petition stands allowed. Consequently, connected miscellaneous petitions are closed.

19.03.2024

Index: Yes/No
Speaking Order/Non Speaking Order
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To

XXVI Metropolitan Magistrate Court,
Egmore.

N.ANAND VENKATESH.,J

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