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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2024

CORAM

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

Crl.O.P.No.19564 of 2023
and Crl.MP.Nos.13220 & 13221 of 2023

Dr.Ravi Venkata Rao

... Petitioner/Accused

Vs.

Sree Mahalakshmi Traders
Rep.by its Manager Mr.Om Prasanth
Having Office at
3rd Shiyam Flat,1 Block, Floor 3B
Villivakkam North,Jaganathan Nagar
Chennai 600 049.

... Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure to call for the records and quash the proceedings in STC No.2168 of 2023, on the file of III Fast Track Metropolitan Magistrate Court, Saidapet.

For Petitioner : Mr.R.Rajarajan
for Mr.D.Nandhagopal

For Respondent : Mr.Gijesh Gopal

ORDER

This quash petition has been filed to quash the proceedings in STC No.2168 of 2023, on the file of III Fast Track Metropolitan Magistrate Court, Saidapet.



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2. Heard M.R.Rajarajan, learned counsel for the petitioner and Mr.Gijesh Gopal, learned counsel for the respondent.

3.The respondent has filed a complaint against the petitioner for offence under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred as 'the Act'). The case of the respondent is that the petitioner had approached the respondent and requested to provide loan in order to develop his College. Believing the words of the petitioner, the respondent paid loan amount of a sum of Rs.2,36,00,000/- by way of cash. Thereafter, the petitioner failed to repay back the amount and the respondent was making repeated demands and requests.

4.Ultimately, the petitioner made part payments to the tune of Rs.61,00,000/-. For the balance amount, the petitioner issued three cheques totalling a sum of Rs.1.75 crores. When these cheques were presented for collection, it was dishonoured. The respondent therefore issued the legal notice dated 05.01.2023, calling upon the petitioner to pay a sum of Rs.1.75 crores which represents the amount covered by the three cheques. On receipt of this statutory notice, the petitioner gave a reply notice dated 19.01.2023, denying the very liability and also alleging that the cheques were being misused and that a complaint has already been given in this regard to the police and the investigation is pending. After the exchange of notices, the complaint came to



be filed before the Court below. The same has been put to challenge in this quash petition.

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5.The learned counsel for the petitioner urged several grounds. The main grounds that were urged by the learned counsel for the petitioner is that misuse of the cheques that were given to the respondent is evident from the fact that the respondent while depositing the cheques, had also deposited a cheque which was not even signed by the petitioner. The learned counsel further submitted that the legal notice was issued to the petitioner calling upon the petitioner to pay a sum of Rs.1.75 crores towards the three cheques issued in favour of the respondent. However, the complaint was filed only for dishonour of cheques to the tune of Rs.1,00,00,000/- and the respondent had given up the claim with respect to the balance amount of Rs.75,00,000/-.

6.The offence under Section 138 of the Act, can be prosecuted only by strictly following the procedure that has been prescribed under the Act. The procedure that has been prescribed is the safeguard that has been given in order to ensure that the provision is not misused. This is more so since a reverse burden has been imposed under Section 139 of the Act and therefore, the institution of the prosecution under Section 138 of the Act must be strictly in compliance with the procedure that has been prescribed under Section 138 of the Act. Section 138(b) the Act specifically states that a demand must be made for



the amount of money that is covered under the cheque and on receipt of this demand, if it is not repaid within 15 days, the cause of action for filing complaint arises for offence under Section 138 of the Act. It goes without saying that the amount that is demanded by way of a notice under Section 138(b) of the Act must be the same amount that is mentioned in the complaint also. This is in view of the fact that the prior notice under Section 138(b) of the Act, creates a cause of action for filing a complaint and therefore the cause of action and resultant complaint must be in tandem. In other words, the statutory notice and the complaint cannot be claiming for different amounts towards the same cheque.

7. In the instant case when the statutory notice was issued, there was a mention regarding three cheques which totally covered an amount of Rs.1.75 crores. Incidentally, out of these three cheques, one cheque was an unsigned cheque which was also presented for collection. Ultimately, when the complaint was filed, the respondent has confined the complaint to only two cheques and it covered only a sum of Rs.1,00,00,000/- as against the demand of Rs.1.75 crores that was made through the statutory notice. This is clearly not in compliance with the strict procedure that has been given under the 138 of the Act. The debt/liability is in variance between the statutory notice that was given to the petitioner and the complaint that was filed before the Court below. Therefore, the continuation of the proceedings will result in abuse of process of



Court which requires the interference of this Court in exercise of its jurisdiction
u/s. 482 of Cr.PC.

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8.In the result, the proceedings in STC No.2168 of 2023, on the file of III Fast Track Metropolitan Magistrate Court, Saidapet, is hereby quashed and this criminal original petition stands allowed. Consequently, connected miscellaneous petitions are closed.

13.02.2024

KP

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

III Fast Track Metropolitan Magistrate Court,
Saidapet.



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N. ANAND VENKATESH, J.

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