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Crl.OP.. No. 20687 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.OP..No. 20687 of 2024

and

Crl.MP.No.11890 of 2024

1. G.Moorthy

2. Gomathi

... Petitioners

Vs.

Maheswari

... Respondent

Prayer: Criminal Original Petition is filed under Section 528 of BNSS to call for the records relating to private complaint preferred against the petitioners in C.C.No.1376 of 2023 pending on the file of the learned Judicial Magistrate-III, Salem and quash the same.

For Petitioners : Mr.S.Concious Ilango

ORDER

The petitioner herein facing trial in the criminal complaint instituted under Section 200 of Cr.P.C for alleged offence under Sections 406, 380, 420, 467, 468, 471 and 506(ii) of IPC.

2. The learned Judicial Magistrate has taken cognizance of offence



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under Sections 380, 406 and 506(ii) of IPC. The matter relating to a cheque which was presented and dishonoured. Though criminal complaint under Section 138 of Negotiable Instruments Act was instituted by the petitioner herein against the complainant Natarajan, it appears that the said complaint not pursued, due to the death of Natarajan, the accused.

3. In the meanwhile, a private complaint under Section 200 of Cr.P.C has been instituted by the deceased Natarajan against the petitioner herein. Alleging that the subject cheque was stolen from him and breach of trust been committed by the petitioner herein who was one time professional associate of the complainant.

4. The learned counsel appearing for the petitioner/accused submits that for issuing a cheque dated 31.05.2019 without sufficient funds, the complaint under Section 138 of Negotiable Instruments Act was instituted. There was no whisper by the accused Natarajan in the said complaint, either when statutory notice was issued to him or the complaint was pending. He suggests that the cheque was stolen from him or misused by breaching trust. However, private complaint was lodged



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and the same was taken on file in C.C.No.1376 of 2023 by the learned Judicial Magistrate-III, Salem which is contrary to the principle laid down by the Hon'ble Supreme Court in ***Bandekar Brothers Pvt. Ltd and Another /vs/ Prasad Vasudev Keni etc*** reported in 2020 SCC 4247.

5. The contention for the learned counsel appearing for the petitioner is that the document which has been alleged to have been forged to get conviction in a court of law. The redressal of the aggrieved party is to proceed under Section 340 of Cr.P.C for filing a forged document to get conviction.

6. In this case, the criminal prosecution under Section 138 of Negotiable Instruments Act already been instituted against the complainant Natarajan and if it is able to prove that the cheque was stolen or forged and misused by the complainant Moorthi to secure conviction. The remedy available for the said Natarajan is to resort to procedures contemplated under Sections 191, 192 of Cr.P.C r/w Section 340 of Cr.P.C. However, contrary to the said procedure the said Natarajan has filed a private complaint. Without proper application of mind, the learned Judicial Magistrate has taken the complaint on file and taken cognizance.



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7. The learned counsel appearing for the petitioner submits that on the demise of Natarajan, the person who instituted the cheque and later retracted, saying that the said cheque was stolen by Moorthi who is one time professional associate has given a complaint, not only against Moorthi and also his wife without any material. After the death of Natarajan, his wife Maheshwari is continuing the prosecution.

8. It is also stated that a suit been filed for recovery of money against the legal heirs of Natarajan, since Natarajan died on 26.05.2021 after dishonouring the cheque issues to discharge his liability. It is further stated that in view of the death of Natarajan pending complaint under Section 138 of Negotiable Instruments Act in STC.No.4982 of 2019 has been abated.

9. The factual scenario as narrated by the learned counsel for the petitioner would indicate that Natarajan who has initiated the private complaint against the petitioner is no more and his wife is pursuing the complaint which is subject matter of C.C.No.1376 of 2023 on the file of learned Judicial Magistrate-III, Salem.



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10. That apart, there is no complaint pending in connection with the subject cheque. Therefore, this Court is unable to countenance the argument made by the learned counsel that a separate complaint for forgery cannot be instituted.

11. The point now for consideration before the trial Court in the private complaint is whether the complainant able to prove the theft of subject cheque and forgery of the signature. No doubt, the recovery of money, the petitioner herein has instituted a suit and the same is pending. The issuance of cheque may be part cause of action for the petitioner herein, but, that will not be a reason or ground to denude the right of the complainant to establish the fact that the subject cheque was stolen and presented for collection with forged signature. These are all purely a matter of fact which could be ascertain or established only on examination of witnesses. The exchange of notice and documents between the parties and the earlier complaint to the police will all ultimately be only to corroborate or contradict the facts and the fact in issued which is subject matter of the private complaint. Forgery of cheque that has to be independently proved by the complainant by



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subjecting the signature found in the cheque for scientific examination.

Therefore, this Court is of the view that under Section 482 of Cr.P.C the inherent power conferred to the High Court, matter of disputed facts should not be tested. Hence, the parties are directed to establish their case before the trial court in manner know to law. Consequently, the connected miscellaneous petition is closed.

27.08.2024

Vv

To

1. The Judicial Magistrate-III,
Salem.
2. The Public Prosecutor,
High Court of Madras.

Dr.G.JAYACHANDRAN,J.



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