BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.03.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

Crl.O.P(MD)No.5344 of 2021

J.George Immanuel .. Petitioner/A5

Vs.

A.R.Muthaiah ..Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to quash the proceedings in S.T.C.No.36 of 2016 on the file of the Fast Track Court No.2(Magisterial Level), Madurai.

For Petitioners : Mr.J.Lawrance
For Respondent : Mr.R.Sundar Srinivasan

ORDER

Seeking to quash the private complaint filed by the respondent under Section 200 Cr.P.C., against the petitioner and other accused for the offence under Section 138 of the Negotiable Instruments Act, the present petition is filed by the 5th accused.

2. The case of the respondent/complainant in a nutshell is as follows:

The Accused Nos.3 to 6 approached the complainant for financial assistance and borrowed various amounts from the complainant and in order to liquidate the same, they executed a demand promissory note dated 04.02.2013 for a sum of Rs.1,30,00,000/-. They also handed over a cheque dated 31.12.2014 for a sum of Rs.1,82,32,500/- drawn on Oriental Bank of Commerce, Madurai Branch. When the cheque was presented for collection by the complainant on 31.12.2014 through his bankers, viz., ICICI Bank, Madurai, the same was returned for the reason 'Account Closed'. Thereafter, the complainant issued a statutory notice dated 29.01.2015 to all the accused. Though the accused received the said notice, they neither came forward to make good the payment due under cheque nor sent any reply notice. Therefore, the respondent filed a private complaint under Section 200 Cr.P.C., before the Judicial Magistrate, Fast Track Court No.II (Magisterial Level), Madurai in S.T.C.No.36 of 2016 for the offence punishable under Sections 138 of the Negotiable Instruments Act. The learned Judicial Magistrate took cognizance of the offences punishable under Section 138 and 141 of the Negotiable Instruments Act and issued summons to the accused. After the closure of the complainant's evidence, and questioning under Section 313 Cr.P.C., the case now stands posted for examination of witnesses on the side of the present petitioner/A5.

3. Mr.J.Lawrance, learned counsel appearing for the petitioner sought for quashment of S.T.C.No.36 of 2016 on the following grounds:

1. Though all the accused are Trustees, the petitioner did not take active part in the day-to-day affairs of the Trust.
2. There is no averment in the complaint that the present petitioner was actually involved in the day-to-day affairs of the Trust.
3. In Clause No.9 of the Trust deed dated 25.05.1992, it is specifically stated that if any of the Trustees commits any act or neglects to commit any act, the same would not bind the other Trustees.
4. Even as per the version of the complainant, the other Trustees executed a demand promissary note and issued cheques. The present trustee/petitioner did not take part in

that Trust.

5. During the pendency of S.T.C.No.36 of 2016, the complainant agreed for receiving a sum of Rs.75,00,000/- in full quit and settlement and in this regard, three cheques, dated 15.10.2015, each for Rs.25,00,000/- drawn on State Bank of Hyderabad, Madurai Branch, were handed over to the complainant.

4. Per contra, Mr.R.Sundar Srinivasan, learned counsel appearing for the respondent/complainant would contend that all the Trustees belong to the same family and the letter written by the father of the present petitioner on 19.04.2014 would show that he executed a letter of undertaking on 19.04.2014 admitting his liability to pay a sum of Rs. 1,30,00,000/- to the complainant and promised to repay the same. In the said letter, the present petitioner is one of the signatories.

5. He also drew the attention of this Court to the letter dated 01.10.2015 sent by the mother and brother of the petitioner to the complainant/respondent which reads as under:

“ Thanks for your support and kind co-operation

for supporting and rendering financial assistance to Matha group of College, Manamadurai.

We have received Rs.1,35,00,000/- (one crore & thirty five lakhs) as loan for our institution development. Due to unavoidable circumstances, we have not been able to pay the loan amount and the cheque issued towards the settlement of the loan has been returned due to insufficient funds. The case is in progess on Fast Track Court in STC.No.289/2015.

Under these circumstances, in order to settle the above loan, we approached the bank and they are asking to pay the processing charges namely Rs.3 lakhs. So, I kindly request you to give us further loan of Rs.3 lakhs. We assure and promise that we will pay a sum of Rs.75 lakhs along with this loan within 15 days from the date of this letter and balance loan amount with interest within a period of one month from this date."

6. His submission is that as per the request of the Trustees, in the letter dated 01.01.2015, he paid a sum of Rs.3,00,000/-. However, the three cheques issued by the accused for a sum of Rs.75,00,000/- also got dishonoured for insufficient funds. It is his further submission that there was no settlement between the parties as alleged by the present petitioner and this is clear from the letter, dated 01.10.2015, wherein the Trustees

had undertaken to pay a sum of Rs.75,00,000/- along with Rs.3,00,000/-. They have also undertaken to pay the balance amount within a period of one month from the date of receipt of the notice. He would therefore contend that the present petition cannot be sustained as the present petitioner had made false allegations in this petition.

7. It is pertinent to point out that the petitioner, who is arrayed as Accused No.5, is one of the Trustees in Matha Memorial Educational Trust. The Trustees are all family members and the father of the present petitioner (A5) had executed an undertaking letter dated 19.04.2014 admitting the liability of the Trust to pay a sum of Rs.1,30,00,000/- to the complainant. In the said letter, as rightly pointed out by the learned counsel for the respondent/complainant, the present petitioner had signed. Subsequently, the other accused had sent a letter dated 01.10.2015 wherein they had stated as follows:

> "*Under these circumstances, in order to settle the above loan, we approached the bank and they are asking to pay the processing charges namely Rs.3 lakhs. So, I kindly request you to give us further loan of Rs.3 lakhs. We assure and promise that we will pay a sum of Rs.75 lakhs along with this loan within 15 days from the date of this letter and balance loan amount*

with interest within a period of one month from this date."

8. A bare reading of the above shows that there was no one time settlement of Rs.75,00,000/- and the petitioner had falsely alleged the same in the present petition. Moreover, the respondent/complainant had paid a sum of Rs.3,00,000/- as requested by A4 and A6. However, three cheques dated 15.02.2015 each for Rs.25,00,000/- drawn on State Bank of Hyderabad, Madurai Branch, issued in his favour were returned for the reason 'Insufficient Funds'. It is also pertinent to point out that no materials are placed before this Court to show that the present petitioner was not involved in the day-to-day affairs of the Trust. Infact, he had signed in the undertaking letter dated 19.04.2014 and therefore, he cannot contend that he did not involve himself in the day-to-day activities of the Trust.

9. The contention of the learned counsel for the petitioner that there is no averment in the complaint that all the accused participated in the day-to-day affairs of the Trust. A bare perusal of the entire complaint shows that the Trustees including the present petitioner assured the complainant that they would repay the amount borrowed by them on

04.02.2013. It is relevant to extract the averments of the complainant in the private complaint.

> *"However, in-spite of the said assurance and understanding, the accused did not make payment and when the complainant pressed for payment of the dues outstanding, a Cheque dated 31/12/2014 for Rs. 1,82,32,500/- bearing Number 459409 drawn on Oriental Bank of Commerce, Madurai Branch, issued and the said cheque has been drawn by the Accused No. 1 and 2 and signed by Accused No.3 and the said and thus, all the accused are deemed to be the drawers of the said cheque they being the Trustees of the accused no.1 ane being involved in administration and management of the said Trust and institutions under the said Trust for the purpose of which the amounts, were borrowed and in discharge of which, the said cheque came to be issued in favour of the complainant and they also have knowledge about the transactions and thus, all the accused are jointly and severally liable in-respect of the said cheque drawn in the name of the accused nos.1 and 2 and signed by accused no.3 and also represented that the said cheque would be dishonoured on presentation."*

10. In such circumstances, it cannot be stated that the provisions of Section 141 of the Negotiable Instruments Act had not been

followed as far as the present case is concerned.

11. Therefore, I do not find any reason to quash the private complaint against the petitioner and accordingly, the Criminal Original Petition stands dismissed.

06.03.2024

Index : Yes/No
Internet : Yes/No
PJL

To
The Judicial Magistrate,
Fast Track Court No.2(Magisterial Level),
Madurai.

R.HEMALATHA, J.

PJL

ORDER MADE IN

Crl.O.P(MD)No.5344 of 2021

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