
(2009) 08 MAD CK 0035

In the Madras High Court

Case No : Criminal O.P. No. 7989 of 2009 and M.P. No. 1 of 2009

Chellammal

APPELLANT

Vs

S. Krihnamoorthy

RESPONDENT

Date of Decision : 05-08-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 139

Citation : (2009) 08 MAD CK 0035

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Advocate : J.R. Prabhakaran, for the Appellant; S. Ramajayam, for the Respondent

Final Decision : Allowed

Judgement

P.R. Shivakumar, J.—The accused in C.C. No. 120/2007 pending on the file of the learned Judicial Magistrate, Dharapuram is the

petitioner herein. The above said case was instituted on private complaint by the respondent herein for an alleged offence punishable u/s 138 of the

Negotiable Instruments Act. The petitioner has come forward with the present petition u/s 482 Cr.P.C for quashing the above said criminal case

instituted against her by the respondent herein.

2. The arguments advanced by Mr. J.R. Prabhakaran, learned Counsel for the petitioner and by Mr. S. Ramajayam, learned Counsel for the respondent were heard. The documents produced on either side were also perused.

3. It was alleged in the complaint that the petitioner herein borrowed a sum of Rs. 2,20,000/- from the respondent herein on 01.03.2007 and

issued a post-dated cheque (dated 08.03.2007) for the above said amount; that when the cheque was presented on 08.03.2007 for encashment, the same was returned unpaid citing insufficiency of funds as the reason; that a notice dated 17.03.2007 demanding payment of the amount covered by the cheque issued by the respondent herein through his lawyer, was received by the petitioner on 22.03.2007 and that there after till the date of filing of the complaint, the petitioner herein did not care either to make payment or to send a reply. The said complaint, after following the procedure for taking cognizance of the offence on private complaint, was numbered as C.C. No. 120/2007 on the file of the learned Judicial Magistrate, Dharapuram and the said court issued process to the petitioner herein. Thereafter, the petitioner has approached this Court by way of the present petition u/s 482 Cr.P.C for quashing the above said criminal proceedings instituted against her on the complaint of the respondent herein.

4. It is the contention of the petitioner that there was no transaction between the petitioner and the respondent herein; that the petitioner's son-in-law by name A. Raj and the father of the said Raj by name Ayyavu had borrowed a sum of Rs. 2,00,000/- on 19.04.2005 by mortgaging their house property in favour of one Balakrishnan, the brother of the respondent herein; that the said Balakrishnan, instead of getting a mortgage deed executed, obtained an agreement for sale from the said persons with false and incorrect recitals as if a sum of Rs. 2,00,000/- was paid as advance and part of the consideration and that the balance consideration of Rs. 25,000/- was to be paid in 35 months; that the said Balakrishnan also wanted the petitioner to issue blank cheques bearing cheque Nos. 857491, 857492 and 857493 pertaining to the account maintained by her in Canara Bank, Dharapuram; that one of the said cheques has been filled up in the name of the respondent herein and the case has been foisted against the petitioner herein. It is the further contention of the petitioner that the amount (Rs. 2,00,000/-) borrowed by Raj and his father Ayyavu was agreed to be repaid in 35 installments and that in the said circumstances alone, cheque No. 857492 was filled up in the name of the respondent and presented for encashment to be eventually returned unpaid for insufficiency of funds. It is the further contention of the petitioner

that though the notice dated 17.03.2007 was received by the petitioner was promptly replied by a reply notice dated 05.04.2007, the respondent

in his complaint had falsely stated that no reply was sent by the petitioner herein.

5. It is the further contention of the petitioner that based on the agreement for sale obtained only as a security for due repayment of the amount

borrowed by the son-in-law of the petitioner and his father, the brother of the respondent has instituted a case for specific performance of contract

in O.S. No. 275/2008 on the file of the Sub-court, Karur. The petitioner's further contention is that the said facts will prove the abuse of process

of law and abuse of process of court by the respondent herein and hence the criminal case instituted against her in the above said calendar case

should be quashed.

6. Per contra, the learned Counsel for the respondent would contend that the transaction between the petitioner and the respondent and the

transaction between Balakrishnan and the son-in-law and father of the son-in-law of the petitioner herein are different transaction; that the

petitioner wants to create confusion by clubbing two independent transactions and that therefore the prayer made in the petition for quashing the

complaint should not be allowed. It is the further contention of the learned Counsel for the respondent that the contentions raised by the petitioner

in this petition, shall, at the best, be grounds of defence that can be raised in the calendar case before the trial court and they are not sufficient for

quashing the criminal proceedings at the threshold itself. The learned Counsel for the respondent argued that the criminal complaint cannot be

quashed taking into account the documents produced and relied on by the petitioner/accused.

7. This Court paid its anxious considerations to the above said submissions made on either side.

8. Of course it is true that an FIR or complaint can be quashed, if the averments made therein do not make out the offence alleged. It is well settled

that the court dealing with a petition u/s 482 Cr.P.C should not try to appreciate or evaluate the evidence proposed to be adduced in support of

the prosecution case and that the criminal proceedings can be quashed, in case the averments found in the complaint or the FIR and the supporting

document, as the case may be, will not make out the offence alleged, even if

they are taken on their face value and considered to be true.

However, there is one exception to the said rule. If the accused is able to show that the initiation of the criminal proceedings itself is claimed to be

abuse of process of court, then the High Court dealing with a petition u/s 482 Cr.P.C can decide whether the institution of the proceedings itself

will amount to abuse of process of court. To arrive at a decision, the court can also consider the materials produced and relied on by the accused.

9. In this case, though it is stated in the complaint that the petitioner borrowed a sum of Rs. 2,20,000/- on 01.03.2007, there is no indication in the

complaint as to the purpose for which the same was borrowed. The amount was allegedly borrowed on 01.03.2007 and the cheque issued for

repaying the amount bears the date 08.03.2007. As rightly pointed out by the learned Counsel for the petitioner, there would have been no

necessity for the petitioner to borrow the amount, if the petitioner was able to mobilise funds to such an extent within 7 days. The statutory notice

issued by the respondent on 17.03.2007 was received by the petitioner on 22.03.2007. A reply notice was sent by the petitioner on 05.04.2007.

The complaint was preferred on 10.04.2007. The petitioner has also produced a copy of the agreement for sale dated 19.04.2005 between A.

Raj & Ayyavu and Balakrishnan, the brother of the respondent herein. The said agreement is a registered one. The sale consideration quoted

therein is Rs. 2,25,000/-. The agreement recites that, out of the total consideration of Rs. 2,25,000/-, Rs. 2,00,000/- was paid as advance on the

date of agreement itself. However, for payment of the balance amount of consideration (comparatively smaller amount of consideration), namely

Rs. 25,000/-, three years time has been stipulated in the said agreement. It is also quite surprising to note an unusual and unnatural commitment

made by the said Balakrishnan by agreeing that the entire amount of advance which formed part of the total sale consideration would be forfeited,

if he was not able to pay the balance within the time stipulated in the agreement. Furthermore, there is nothing in the agreement stating that the

property concerned in the agreement was in possession of tenants and that the vendors therein (son-in-law of the petitioner and his father) agreed

to vacate the tenants before execution of the sale deed. On the other hand, the said Balakrishnan seems to have filed a suit O.S. No. 275/2008 on

the file of the Sub-court, Karur alleging that he was ready and willing to pay the remaining sale consideration but the vendors therein ignored his

request to vacate the tenants and execute the sale deed. It was also stated therein that Balakrishnan had been insisting upon the defendants in the

suit to get the tenants vacated. For the notice issued by Balakrishnan, the son-in-law of the petitioner seems to have issued a reply on 10.02.2008.

However, while filing a suit in the month of November 2008, it was averred in the plaint that no reply was sent.

10. For the statutory notice issued u/s 138(b) of Negotiable Instruments Act, 1881, the petitioner has issued a suitable reply on 05.04.2007, a

copy of which has been produced as document No. 3 in the typed set of papers. In the said reply notice, the petitioner has clearly narrated what

transpired. The said reply notice was issued several months prior to the filing of the suit by the said Balakrishnan, the brother of the respondent

herein. In the said reply notice, the petitioner has made it clear that she had given blank cheques as guarantor for her son-in-law and his father. If all

these aspects are taken into consideration, it will make it clear that the respondent/complainant has not come with clean hands to the court. The

above said documents produced by the petitioner/accused are enough to show that the institution of the criminal proceedings for an offence u/s

138 of the Negotiable Instruments Act, 1881 is nothing but a sheer abuse of process of law and abuse of process of court.

11. Of course, this Court is aware of the fact that Section 139 of the Negotiable Instruments Act, 1881 gives rise to a presumption that such

cheque was received in discharge of a debt or liability. But such a presumption cannot be further extended to presume that there was such a debt

or liability. Even assuming that such a debt or liability can be presumed, such a presumption is only a rebuttable presumption. The general

presumption that a person shall be presumed to be innocent unless he is proved to be guilty is not in any way affected. The presumption

contemplated in Section 139 of the Negotiable Instruments Act, 1881 causes a reverse burden on the accused and such a reverse burden can be

discharged by rebutting such presumption. To rebut the presumption u/s 139 of the Negotiable Instruments Act, 1881, it is not necessary for an

accused to adduce evidence capable of proving beyond reasonable doubt. It shall be sufficient to prove the contra by preponderance of

probabilities and then such presumption shall stand rebutted. The High Court dealing with the petition u/s 482 Cr.P.C should consider whether the materials relied on by the accused shall be enough to dislodge the presumption u/s 139 of the Negotiable Instruments Act, 1881 and discharge the reverse burden of proof and thereby cause a reasonable suspicion in the case of the complainant, which will make the entire exercise of trial useless as the same is bound to result in acquittal.

12. This Court, after taking into consideration all the above said aspects, comes to the conclusion that the materials placed before this Court by the petitioner are enough to rebut the presumption and discharge the reverse burden cast on the petitioner/accused. This Court is also of the view that the trial cannot result in conviction as there are enough materials to prove the case of the petitioner/accused on preponderance of probabilities, capable of causing a reasonable suspicion in the case of the respondent/complainant. This Court is also of the considered view that the petitioner has made out a clear case of abuse of process of court by preponderance of probabilities. Therefore, this Court comes to the conclusion that the petition shall succeed and the criminal proceedings instituted against the petitioner by the respondent in C.C. No. 120/2007 has got to be quashed.

13. In the result this petition is allowed and the criminal proceedings initiated in C.C. No. 120/2007 on the file of the Judicial Magistrate, Dharapuram is quashed. Consequently, the connected MP. No. 1 of 2009 is also closed.