(1999) 07 MAD CK 0131

In the Madras High Court

Case No : Criminal O.P. No. 22382 of 1998 and Criminal M.P. No''s. 10864 and 10865 of 1998 and 3387 of 1999

Prudential Capital Markets Ltd. and Others APPELLANT

Vs

Karpaga Vinayagar Estate Private Ltd. RESPONDENT

Date of Decision : 20-07-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 406, 420
Reserve Bank of India Act, 1934 — Section 45QA

Citation : (1999) 98 CompCas 385

Hon'ble Judges : A. Ramamurthi, J

Bench : Single Bench

Advocate : Millid Gokhale, for Raja Gopal and Prabhu Ram, in Criminal O.P. No. 22382 of 1998 and Criminal M.P. Nos. 10864 and 10865 of 1998, R. sankara Subbu, in Criminal M.P. No. 3387 of 1999, for the Appellant; Millid Gokhale Advocate for Raja Gopal and Prabhu Ram, in Crl. M.P. No. 3387 of 1999 and R. sankara Subbu in Crl. O.P. No. 22382 of 1998 and Crl. M.P. Nos. 10864 and 10865 of 1998, for the Respondent

Final Decision : Allowed

Judgement

A. Ramamurthi, J.—The petitioners who are accused Nos. 1 to 5 in C. C. No. 9150 of 1998 on the file of the second Metropolitan Magistrate Court, Egmore, have filed this petition u/s 482 of the Criminal Procedure Code, 1973, to quash the proceedings pending against them.

2. The case in brief is as follows :

The respondent preferred a complaint against these petitioners under Sections 406 and 420 read with Section 34 of the Indian Penal Code and Section 200 of the Criminal Procedure Code on the allegation that the amounts made as deposits with the first petitioner were not repaid on maturity and the cheques issued were not honoured on presentation and were returned for "insufficient funds". Separate complaints were filed before the Judicial Magistrate Court, Tambaram, and also before the Judicial Magistrate Court, Ambattur, relating to the dishonour of the cheques u/s 138 of the Negotiable Instruments Act. A bare reading of the complaint will indicate that there is no mention of any offence or criminal misappropriation. The cheques were issued much after the deposits had matured and there was absolutely no dishonest intention on the part of the company to cheat or misappropriate.

The only reason for the return of the cheques was due to the company facing the financial crisis. The learned Magistrate on presentation of the complaint, recorded the sworn statement and immediately issued non-bailable warrant against the petitioners. The Company Law Board, Eastern Region Bench, on the basis of the complaints received by it initiated u/s 45QA of the Reserve Bank of India Act, wherein it gave a substantial scheme to the company to make repayments to all the depositors spread over a period of four and half years. The said order is applicable to the depositors who had applied before the Company Law Board as well as those who had not done so. One of the conditions in the order was that all the cheques issued by the company which have bounced should be returned by the depositors to the company and in turn, fresh cheques will be issued by the company to the depositors as per the instalments laid down by the Company Law Board. This order was widely circulated and published in all the national dailies in the country despite the fact that the complaint has been given. The complaint so far as these petitioners are concerned, is an abuse of process of law and court. They have also suppressed the fact that they have preferred a complaint u/s 138 of the Negotiable instruments Act, and on the same cause of action and pleadings instituted the present complaint with mala fide intentions and ulterior motives. Hence, the petition. Learned counsel for the respondent/complainant stated that they are not aware of the order passed by the Company Law Board and the complaint given is proper and correct.

3. Heard learned counsel on both sides.

There is no dispute that private complaint has been filed against these petitioners relating to dishonour of a number of cheques and two cases are pending on the file of the Judicial Magistrate Court, Tambaram, and two cases are pending on the file of Judicial Magistrate Court Ambattur. Based on the same cause of action, now the respondent has filed a complaint before the court and the same was taken on file in C. C. No. 9150 of 1998 for alleged offences under Sections 406 and 420 of the Indian Penal Code and after recording sworn statement, warrant has been issued. Learned counsel for the petitioners mainly contended that when already a complaint has been filed u/s 138 of the Negotiable Instruments Act, suppressing the same with mala fide intention, the present complaint has been filed as if the petitioners have committed the offences of criminal misappropriation and also cheating. There is clear suppression of the filing of the complaint u/s 138 of the Negotiable Instruments Act in this case. A perusal of the complaint clearly disclosed that there is nothing to infer about the complaint filed by them for the offence u/s 138 of the Negotiable Instruments Act. It is a deliberate omission on the part of the respondent in the subsequent complaint.

4. Learned counsel for the petitioners relied upon a decision of this court in Venkatachalam Vs. State, wherein this court has observed that if any cheque was issued at a later point of time and the cheque is returned, the dishonest intention cannot be inferred from such circumstances. This decision is applicable to the case on hand. When evidently in respect of the same dishonoured cheques, separate complaints were filed in the appropriate court, the respondent suppressed the same and filed the private complaint and hence, I am of the view that it is nothing but an abuse of process of the court, and as such, the interference of the court is necessary in order to avoid miscarriage of justice.

5. The next contention put forward by learned counsel for the petitioners is that the Company Law Board, Eastern Region Bench on the basis of the complaints received, initiated proceedings u/s 45QA of the Reserve Bank of India Act and gave a substantial scheme to the company to make repayment to all the depositors spread over a period of four and half years. The proceedings of the Company Law Board dated May 27, 1998, are also filed. Clauses 7 and 8 read as follows :

"7. This Eastern Region Bench of the Company Law Board has started receiving applications u/s 45QA of the Reserve Bank of India Act from depositors against the PCML complaining of non-repayment of their deposits since July, 1997. Initially the flow of such applications was very thin but later on it assumed bigger proportions day-by-day. As a rough estimate, this Company Law Board has received 2,550 applications as on April 30, 1998.

8. Taking into account the increased volume of applications coming in day-by-day and keeping in view the woes of depositors at large, many of them may not perhaps be aware of even the simple procedure for making application to the Company Law Board, in Form No. 4, under the Company Law Board Regulations, 1991, it was considered appropriate to exercise suo motu powers for ordering repayment of the deposits, even without an application from the depositors in PCML. This order covers both the depositors who have applied in Form No. 4 and the depositors who have not applied for."

6. It is seen from page 8 of the same proceedings that the company shall issue forthwith demand drafts towards interest against bounced cheques issued in this regard after collecting the cheques from the depositors. Depositors shall surrender their bounced cheques issued by the company, if any, forthwith. It is also necessary to state that the order covers both the depositors who have applied for in Form No. 4 and the depositors who have not applied for also, and the modified repayment schedule is also furnished in the said proceedings.

7. In view of the order passed by the Company Law Board and also the suppression of the filing of a complaint u/s 138 of the Negotiable Instruments

Act, it can be safely concluded that the respondent has filed this complaint with an oblique motive with a mala fide intention and as such, the proceedings are liable to be quashed,

8. For the reasons mentioned above, the petition is allowed and the proceedings in C. C. No. 9150 of 1998 on the file of the second Metropolitan Magistrate Court, Egmore, are liable to be quashed and accordingly, they are quashed so far as these petitioners are concerned. Consequently, connected criminal miscellaneous petitions are closed.

