
(2009) 07 MAD CK 0332

In the Madras High Court

Case No : Criminal O.P. No. 3755 of 2009 and M.P. No. 1 of 2009

V. Kalpana

APPELLANT

Vs

Malarvizhi

RESPONDENT

Date of Decision : 01-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 380

Citation : (2009) 07 MAD CK 0332

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

Bench : Single Bench

Advocate : J. Kathiresan, for the Appellant;

Final Decision : Dismissed

Judgement

P.R. Shivakumar, J.—The accused in C.C. No. 46/2007 on the file of the learned Judicial Magistrate No. V, Vellore has come forward with the present petition u/s 482 Cr.P.C. for quashing the above said criminal proceedings.

2. The submissions made by Mr.J.Kathiresan, learned Counsel for the petitioner were heard. The petition and the documents produced along with the petition were also perused.

3. The above said case, namely C.C. No. 46/2007 was instituted on the file of the learned Judicial Magistrate No. V, Vellore against the petitioner herein based on the complaint of the respondent herein preferred u/s 200 Cr.P.C for an alleged offence punishable u/s 138 of the Negotiable Instruments Act, 1881.

4. The petitioner has come forward with the present petition for quashing the above said criminal proceedings initiated against her on the ground that the complaint itself is an abuse of process of court. It is the contention of the petitioner that the respondent herein, as a client of the petitioner, used to visit petitioner's house regularly; that the petitioner's husband is running a primary

school; that her cheque book and the school documents were missing from 22.09.2006 and she preferred a complaint on the file of Pallikonda Police Station, Vellore district informing the same to the police; that after investigation, she was issued a "not traceable" certificate on 30.09.2006; that thereafter she received a lawyer's notice on behalf of the respondent herein, as if she had given a cheque for a sum of Rs. 50,000/- and the same was dishonoured when presented for encashment and that only thereafter she came to know that the cheque book and the school documents would have been stolen by the respondent herein. It is the further contention of the petitioner that though a "not-traceable" certificate was issued on 30.09.2006 itself, she again preferred a complaint against the respondent herein and her husband Palani for the theft of the cheque book and school documents; that she had to approach this Court by way of a petition in Crl. O.P. No. 7525/2007 to get an order on 20.03.2007 directing the police to register a case and investigate the same in accordance with law and that only pursuant to the said direction, a case was registered against the respondent herein and her husband in Cr. No. 134 of 2007 on the file of Pallikonda Police Station. It is the further contention of the petitioner that one of the cheque leaves detached from the cheque book stolen by the respondent was filled up, presented for collection and a case has been instituted after complying with the formalities of instituting a private complaint for an offence punishable u/s 138 of the Negotiable Instruments Act, 1881. According to the petitioner the complaint is nothing but an abuse of process of court.

5. This court, upon hearing the submissions made by the learned Counsel for the petitioner in respect of the above said contentions raised by the petitioner in this petition and after perusing the petition and the documents filed along with the petition in the form of a typed set of papers, comes to the conclusion that all the allegations made by the petitioner in the petition can be raised as plea of defence before the trial court and that they cannot be the grounds on which the complaint itself can be put to death at the threshold, as they touch the merits of the case. No procedural irregularity has been alleged in the petition.

6. It is not in dispute that the cheque in question pertains to the account maintained by the petitioner in her bank. It is also not in dispute that the cheque contains her signature. It is also not in dispute that the said cheque, when presented for encashment was returned unpaid with a dishonour note "funds insufficient". Statutory notice was also given within the time prescribed by the statute. The complaint has been preferred after a period of 15 days from the date of receipt of statutory notice received by the petitioner herein. Therefore, no procedural defect can be found in the institution of the case on private complaint. It is also not the case of the petitioner that the averments found in the complaint are not enough to disclose the commission of an offence punishable u/s 138 of the Negotiable Instruments Act. On the other hand, she has come forward with a plea that there was foul play on the part of the respondent herein and the complaint itself has been preferred based on a stolen cheque leaf. As pointed out supra, the said contention, can at best be raised as a plea of defence before the

trial court and cannot be the basis on which the petitioner can seek quashing of the complaint unless more concrete materials are placed.

7. The petitioner relies on the documents produced as copies of a complaint lodged with Pallikonda Police Station on 22.09.2006 and a "not traceable" certificate issued by the police on 30.09.2006. The petitioner is an advocate. She knows very well the consequences that may flow, if a missing cheque book comes in the hands of other persons. Therefore, it is quite improbable that the petitioner would have kept the cheque leaves signed. Secondly, if at all such signed cheque leaves were found missing, besides giving a complaint to the police, she would not have forgotten to give instructions to her banker not to honour such cheque/cheques, if presented for collection. In fact the cheque numbers have been furnished in the alleged complaint given to the police on 22.09.2006. Therefore, the petitioner cannot state that she had forgotten the numbers of the cheque leaves and hence she was not able to instruct the bankers, with required particulars, not to honour the cheque/cheques, if presented for encashment.

8. Apart from the same, the complaint stating that a cheque book containing 18 cheque leaves was missing, is said to have been lodged with Pallikonda Police Station on 22.09.2006. No case was registered and no receipt was given. The petitioner has not produced any receipt to show that such a complaint was lodged. However, she was able to obtain a certificate from the Sub-Inspector of Police, Pallikonda Police Station on 30.09.2006 to the effect that the missing articles could not be traced. Within a span of 7 days, the Sub-Inspector of Police gave such a "not traceable" certificate. Such a certificate does not contain either a crime number or CSR number or the particulars of the receipt issued for the complaint. Therefore, there is possibility of holding that the petitioner, being an advocate, could have exerted influence with the Sub-Inspector of Police and obtained such a certificate. Even after obtaining such a "not traceable" certificate from the police, the petitioner has not chosen to issue any instruction to the bank not to honour those cheques, if presented for encashment. That itself will make it possible to make an inference that the complaint and the certificate could have been created antedating the same after the statutory notice was issued by the respondent to the petitioner herein.

9. The statutory notice u/s 138(b) was issued by the respondent on 09.02.2007. It was admittedly received by the petitioner on 13.02.2007. Though the petitioner has stated that a suitable reply was sent, the petitioner has not enclosed any copy of such reply notice. On the other hand, the petitioner has chosen to lodge a complaint with the Inspector of Police, Pallikonda police station on 03.03.2007. Immediately thereafter she approached this Court by way of a petition u/s 482 Cr.P.C in CrI.O.P.7525/2007 and obtained an order directing registration of a case based on such complaint. Only thereafter a case was registered on the file of Pallikonda police station in Cr. No. 134/2007 for an offence u/s 380 IPC against the respondent herein and her husband. All those

documents have been brought into existence only after the receipt of the statutory notice issued by the respondent herein. Whether those documents are genuine or were created for the purpose of defending the case preferred by the respondent herein against the petitioner herein for an offence u/s 138 of the Negotiable Instruments Act, has got to be tried and decided. Those documents are not clinching documents to come to the conclusion that the criminal case was instituted against the petitioner based on a stolen cheque leaf. The said contention of the petitioner should be canvassed as a plea of defence in the criminal case instituted against her. The improbabilities of the contentions raised by the petitioner herein has been highlighted only to show that the same cannot be the ground on which the complaint itself can be quashed. The petitioner has not proved that the institution of the case against her for an offence u/s 138 of the Negotiable Instruments Act was an abuse of process of court.

10. For all the reasons stated above, this Court comes to the conclusion that the petitioner has not made out a case for quashing of the criminal proceedings against her instituted on private complaint for an alleged offence punishable u/s 138 of the Negotiable Instruments Act and that this petition deserves to be dismissed, even without notice to the respondent.

11. In the result, this petition is dismissed. However, by way of abundant caution, it is made clear that any observation made in this order shall not be construed to be a view expressed on the merits of the case. The trial court shall consider the case on its own merit without being influenced by any of the observations made herein.