

C. Mohammed Haneefa Vs. M. Mohammed Yusuf

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Court : Chennai

Decided On : Nov-26-1992

Reported in : [1994]80CompCas495(Mad)

Judge : Padmini Jesudurai, J.

Appeal No. : Crl. O.P. Nos. 3461 and 3465 to 3467 of 1992

Appellant : C. Mohammed Haneefa

Respondent : M. Mohammed Yusuf

Judgement :

Padmini Jesudurai J.

1. The accused in C.C. Nos. 1006 of 1991, 1004 of 1991, 1005 of 1991 and 1007 of 1991 on the file of the Judicial Magistrate No. V, Madurai, invokes the inherent powers of this court under section 482 of the Criminal Procedure Code, 1973, to quash the above proceedings.

2. The respondent in these petitions filed four complaints against the petitioners herein, for an offence under section 138 of the Negotiable Instruments Act, 1881. In that the cheques issued by the petitioner, when presented to the bank for collection, were returned unpaid for want of funds and despite the statutory notice, the petitioner failed to make the payment. The case had been taken on file and trial is yet to begin.

3. It is these complaints that are sought to be quashed.

4. Thiru S. Samuel Rajapandian, learned counsel for the petitioner, would contend that the complaints are false, that he himself has given a complaint against one Babjan in respect of these cheques and that the said complaint has been referred to the police under section 156(3) of the Code of Criminal Procedure and if that complaint is found to be true, the private complaints filed by the respondent, which are sought to be quashed, would be false and as such, these complaints should at least be stayed till the police conclude the enquiry into the petitioner's complaints. Learned counsel also contended that the petitioner had given ten blank cheques and two promissory notes and they were issued under the circumstances mentioned in his complaint to the police, and consequently, the present complaints filed by the respondent in the courts are false.

5. Per contra, Thiru K. V. Mainickavasagan, learned counsel for the respondent, would submit that at this stage the court has merely to see whether the averments made in the complaint make out an offence and it is not for this court under section 482 of the Criminal Procedure Code 1973, to go into the truth or falsity of the allegations in the complaint. The proceedings, therefore, cannot be quashed.

6. The question that arises for consideration is whether the complaints can be quashed.

7. In the four complaints, the respondent has stated that the petitioner issued the cheques mentioned therein and the cheques had been presented for collection, but they were returned unpaid for insufficient funds, and that thereafter the respondent issued notice to the petitioner, for which a reply notice had been sent. But, since no amount was paid, the offence under section 138 of the Negotiable Instruments Act, 1881, had been committed.

8. In the typed set, the petitioner has enclosed a copy of the complaint presented by him in the Court of the Judicial Magistrate. Tiruchirappalli, against one Babjan of Madurai, wherein he has stated that the petitioner got acquainted with Babjan and learnt that he is capable of contacting persons, who would give advance amounts for his business and on July 16, 1991, Babjan came to Trichy and stayed

at the central bus-stand there, where he met the petitioner and represented that his close relations are also lending money and he knew other people also who would lend money and wanted ten cheques undated and without the name of the drawee and four blank promissory notes in order to approach the financiers to persuade them to advance money for the petitioner and accordingly the petitioner gave Babjan the cheques as well as the promissory notes, but later Babjan did not return either the cheques or the promissory notes and did not make arrangement for finance and the cheques had to be returned to the petitioner. An offence under section 406 of the Indian Penal code is made out.

9. At this stage, this court cannot go into the respective version of the parties in regard to the issuance of the cheques. What the petitioner puts forward would possibly be a defence during trial. That has to be established during trial and can be gone into only by the trial court. It would not be proper for this court even to order stay of the trial pending investigation into the complaint of the petitioner against Babjan. It is always open to the petitioner to have these complaints marked during trial and rely on them for proving his case. Even if what is stated by the petitioner in his complaint is true, it is only the trial court that has to go into these allegations. Factual disputes cannot be gone into under section 482 of the Criminal Procedure Code.

10. Granting the petitioner liberty to place all these matters before the trial court during trial for the consideration of the trial court, these petitions are dismissed.