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S. KRISHNAMOORTHY

v.

CHELLAMMAL

B

(Criminal Appeal No.1771 of 2010)

MARCH 31, 2015

[DIPAK MISRA AND PRAFULLA C. PANT, JJ.]

C

Code of Criminal Procedure, 1973 – s. 482 – Power under, exercise of – Criminal proceedings initiated against respondent relating to offence punishable u/s. 138 NI Act – Petition u/s. 482 by the respondent seeking quashing of the proceedings – Allowed by the High Court holding that the material before it was sufficient to cause reasonable suspicion in the case of the complainant – On appeal, held: High Court committed grave error of law in examining the allegations and counter allegations which are highly disputed and factual in nature in a proceedings u/s. 482 – Such type of disputed factual defences could have been appreciated only by the trial court, after the parties led their evidence – Thus, the order passed by the High Court set aside – Negotiable Instruments Act, 1881 – s. 138.

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Padal Venkata Rama Reddy alias Ramu v. Kovvuri Satyanarayana Reddy and others **2011 (9) SCR 623: (2011) 12 SCC 437 – referred to.**

G

Case Law Reference

2011 (9) SCR 623

Referred to.

Para 6

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1771 of 2010.

From the Judgment and Order dated 05.08.2009 of the High Court of Judicature at Madras in Cri O.P No. 7989 of 2009. A

Senthil Jagadeesan for the Appellant.

P. N. Ramalingam for the Respondent. B

The Judgment of the Court was delivered by

PRAFULLA C. PANT. J. This appeal is directed against order dated 5.8.2009, passed by the High Court of Judicature at Madras, in Criminal O.P. No. 7989 of 2009 whereby said petition was allowed, and criminal proceedings initiated against respondent Chellammal relating to offence punishable under Section 138 of Negotiable Instruments Act, 1881 (for short "the Act") are quashed by the High Court, exercising the powers under Section 482 of the Code of Criminal Procedure, 1973 (for short "the Code"). C D

2. Heard learned counsel for the appellant. None appeared on behalf of the respondent, though served. E

3. Brief facts of the case are that respondent Chellammal borrowed a sum of Rs.2,20,000/- from appellant S. Krishnamoorthy on 1.3.2007, and issued a post-dated (8.3.2007) cheque towards repayment of the loan. However, when the cheque was presented before the Bankers on 8.3.2007, the same was returned unpaid on the ground of insufficiency of funds. Consequently, a notice dated 17.3.2007 was sent by the appellant to the respondent demanding payment of the loan. Said notice was received by the respondent on 22.3.2007. But, instead of making the payment, she sent reply dated 5.4.2007 falsely alleging that her father and son-in-law had borrowed loan of Rs.2,00,000/- from the appellant, and the respondent stood only surety to said transaction. Consequently, criminal complaint (C.C. No. 120 F G H

A of 2007) was filed by the appellant before the Judicial Magistrate, Dharapuram, for prosecution of respondent Chellammal in respect of offence punishable under Section 138 of the Act.

B 4. The respondent (accused) challenged the proceedings of criminal complaint case by moving a Criminal Original Petition under Section 482 of the Code before the High Court. In said petition the accused pleaded that her son-in-law A. Raj and Ayyavu (father of A. Raj) had actually borrowed
C a sum of Rs.2,00,000/- on 19.4.2005. The cheques in question were only taken as security. Actually, loan was taken by A. Raj and Ayyavu by mortgaging their house in favour of one Balakrishnan, brother of the present appellant. It is alleged by
D the present respondent (accused) in the petition that Balakrishnan, instead of getting the mortgage deed executed, obtained an agreement of sale from aforesaid two persons with false and incorrect recitals, that a sum of Rs.2,00,000/-
E of Rs.25,000/- shall be paid within 35 months. Cheques bearing Nos. 857491, 857492 and 857493 of Canara Bank, Dharapuram Branch, were got filled up in the name of the complainant (appellant), which were misused by him.

F 5. The above defence of the respondent (accused) before the High Court, in the petition filed under Section 482 of the Code, is nothing but absolutely factual in nature, which is neither admitted by the complainant, nor apparent on the face of the record. Such type of disputed factual defences could
G have been appreciated only by the trial court, after the parties led their evidence. In our opinion, the High Court committed grave error of law in examining the allegations and counter allegations which are disputed and factual in nature in a proceeding under Section 482 of the Code.

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6. In *Padal Venkata Rama Reddy alias Ramu v. Kovvuri Satyanarayana Reddy and others*¹, this Court, explaining the law on the scope of Section 482 of the Code, has observed, in paragraph 32, as under: -

“32. It would not be proper for the High Court to analyse the case of the complainant in the light of all the probabilities in order to determine whether conviction would be sustainable and on such premise arriving at a conclusion that the proceedings are to be quashed. In a proceeding instituted on a complaint, exercise of inherent powers to quash the proceedings is called for only in a case in which the complaint does not disclose any offence or is frivolous, vexatious or oppressive. There is no need to analyse each and every aspect meticulously before the trial to find out whether the case would end in conviction or acquittal.”

7. In view of the above position of law, we have no option but to set aside the order passed by the High Court as it has entered into highly disputed questions of fact and concluded that the material before it was sufficient to cause reasonable suspicion in the case of the complainant. That is not the ground on which powers under Section 482 of the Code can be exercised by the High Court.

8. Therefore, the appeal is allowed. The impugned order dated 5.8.2009 passed by the High Court of Judicature at Madras in Criminal O.P. No. 7989 of 2009 is hereby set aside. The Criminal complaint (CC No. 120 of 2007) pending before the Judicial Magistrate, Dharapuram, shall stand revived. The trial court shall proceed in accordance with law.

Nidhi Jani

Appeal allowed.