KABD020027432022

IN THE COURT OF ADDL. SENIOR CIVIL JUDGE & JMFC., AT BIDAR

ABDUL KHADAR

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Date: 2023.06.15 15:23:05 +0530

Present: Abdul Khadar, B.A., LL.B.,
ADDL. SENIOR CIVIL JUDGE & JMFC., AT BIDAR

Dated this the 07th day of June-2023

C.C. No: 43/2023

Complainant Ravinder S/o Kallayya Swami
age: 46 years, Occ: Business
R/o: 8-11-590, Venkateswara colony,
Near National college, Bidar-585 401.

(By Sri.Mathapati Sanjay- Advocate)

-Vs-

Accused:

Shri Shivkumar @ Shiv S/o Gurulingayya @ Gurayya Madapathi
Age: 41 years, Occ: Business
R/o: F.No.306,Phase-2 A.K. Enclave Apartments, H.No.8-2-350 A, Road No.3, Banjarahills, Hyderabad-34.

(By Sri.Gouse Veeranjaneya Reddy- Advocate.)

ORDERS U/s.245(1) of Cr.P.C

The counsel for the accused has filed application under Sec.245(1) of Cr.P.C, praying to discharge the accused from the allegation levelled against him, in the interest of justice.

2. In the application, it is contended that the complainant filed this case against the accused for offence P/U/Sec.138 of N.I Act. Accused is a business man. He run Garment Manufacturing unit, but due to loss he closed the unit in the year 2018. The accused never received hand loan of Rs.1,42,00,000/- from the complainant. The complainant has not deposited Rs.12,00,000/- in the account of the accused on 11-06-2019 and not paid Rs.50,00,000/- by cash on 01-09-2019 and Rs.41,00,000/- on 13-09-2019 as alleged in the complainant. The complainant not requested the accused to repay amount of Rs.1,42,00,000/- in the March 2020 and he not requested the complainant to give three or four months time for repayment. Further contended that the accused has not given (I) Cheque bearing No.000262 dated: 16-09-2020 for Rs.35,00,000/-, (ii) Cheque bearing No.000264 dated:16-09-2020 for Rs.37,00,000/-, (iii) Cheque bearing No.000267 dated: 16-09-2020 for

Rs.35,00,000/- and (iv) Cheque bearing No.000268 dated: 16-09-2020 for Rs.35,00,000/- drawn on Kotak Mahindra Bank Limited Balkampet Road Ameerpet Hyderabad and accused has not requested him to preset the aforesaid cheques for encashment in the bank after one month. The accused has not voluntarily executed an “AGREEMENT FOR REPAYMENT OF HAND LOAN” document of two hundred rupees stamp paper in the presence of witnesses in favour of complainant agreeing about the receipt of the aforesaid hand loan amount from the complainant. Further contended that that the complainant has taken his signatures on papers and by threat obtained five (5) cheques. Before presenting the cheques the complainant has not intimated the accused and the accused has not consented it. The presentation of the cheques itself is wrong and illegal and therefore no cause of action arise to initiate any proceedings under the Negotiable Instrument Act., or CPC. Further contended that the accused has not received the bounced cheques amount from the complainant and therefore the question of repayment of the said bounced cheques amount does not arise. The complainant has taken the cheques at a time and forcefully get the signatures of the accused at a time forcefully by threat.

3. Accused further contended that he has paid an amount of Rs.15,00,000/- on 18-09-2019 and Rs.5,00,000/- on 27-08-2019 to the friend of the complainant by name TVS PRASAD by way of RTGS-KKBKR52019082700648671 bearing account No. 000135435692 and Rs.6,00,000/- to Praveen Kubela in the month of February 2020, out of Rs 39,00,000/-(i.e. amount of Rs.8,00,000/- and Rs. 1,00,000 on 21-6-2019, and Rs.30,00,000/- on 21-08-2010 in the account of the petitioner bearing A/C. No. 782011001397 of Gable In Kotak Mahindra Bank Limited, branch BalkampetRaod, Ameerpet through Kotak Mahindra Ltd,.) and same fact brought to the notice of the complainant, but to his surprise the complainant and his friends in the month of January 2020 demanded the petitioner double the amount stating that he has nothing to do with the above said amount of Rs.26,00,000/- sent by the petitioner to the account of Shri. TVS PRASAD. The amount was sent at the instructions of the complainant. The petitioner paid cash Rs.6,00,000/- to his friend by name Praveen Kubela. In the month of February 2020 Le. On 19-02-2020 to the friend of complainant by name Praveen Kubela came to Hyderabad and took the petitioner to Bidar stating that the complainant want to talk with the petitioner. He took

the petitioner to the farm house of the complainant at Bidar. The petitioner was forcefully confined in the farmhouse. The complainant threatened the petitioner with dire-consequences. On that day the complainant demanded an amount of Rs.60,00,000/-(rupees sixty lakhs) from the petitioner. The complainant has forcefully took the mobile of the petitioner and through the petitioners mobile sent a mail to the mail address of the complainant stating that the petitioner has taken Rs.60 lakhs from the complainant and he will repay the same by 5 March 2020. They have threatened that if the petitioner fails to pay by that date the friends of complainant by name Praveen, Ravi Anna will come to the petitioners place and stay at his house till he give them money. Further contended that in the month of July 2020 the complainant and his friend by name Praveen Kubela called the petitioner and asked him come to Bidar saying that they are calling all teammates by name Pu Chandra Rao, TVS Prasad and Praveen Kubela to discuss about payments made by the petitioner to TVS Prasad, Purna chandra Rao Praveen Kubela. The petitioner went to Bidar in the month of July, but they have not come on that date and other persons are there in office of the complainant. While discussing the complainant forcefully the cheque book from the petitioners bag and taken away five (5) leaves from the bank pass book and threatened him with consequences and pressurized him to sign on blank cheque petitioner frightened and become faint. He was not in a position to understand what he is doing and to save his life from the hands of the complainant and his men the petitioner has signed on five cheques. The petitioner has not executed any bond paper nor admitted hand loan amount i.e., the four (4) bounced cheques amounts as alleged in the complaint.

4. Accused further contended that the complainant issued notice to the accused in turn he had given appropriate reply Instead of not persecuting the matter further after receiving the notice, with a malicious intention to extract huge amounts from the accused the complainant has filed this false case stating that on 28 July 2020 the complaint has presented the **cheque bearing No.000268, dated: 16-09-2020 for Rs.35,00,000/-,** issued by the petitioner/accused in his bank account and the same was returned due to insufficient funds, instead of dropping the case against the accused. The claim of bounced cheque amount is not a debt legally enforceable by the complainant. There is

no legally enforceable transaction between the complainant and the accused. The complainant has not transferred or paid the cheque amount to the accused and therefore, the petitioner is not liable to pay the claimed amount to the complainant and no criminal act was committed by the accused. It is a pure case of cheating by the complainant and this court has no jurisdiction to entertain the case against the petitioner for offence U/s 138, as the respondent has no proof of evidence to show that he has paid Rs.1,42,00,000/- to the accused. Hence the present complaint does not survive hence it is fit to be dropped the present accused any kindly be discharged from the alleged offences. The petition may kindly be allowed and the present complaint may kindly be dropped this stage and the accused may kindly be discharged from alleged charges with heavy cost in the interest of justice.

5. The learned counsel for the complainant has filed objections contending that the application is not maintainable either in law or on facts. The complainant has denied that he has not obtained the amount involved in the cheque and has not executed the AGREEMENT FOR REPAYMENT OF HAND LOAN. The contention of the

accused that in the month of February 2020 i.e., on 19th February 2020 the friend of the complainant Praveen Kubela came to Hyderabad and took the accused to Bidar stating that the complainant threatened the accused with dire-consequences and demanded amount of Rs.60,00,000/- is false and baseless, hence complaint deny the same. Further it is falsely contended by the accused that the complainant deny forcefully took the mobile of the accused and sent a mail to the mail address of the complainant stating that the accused has taken Rs.60 lakhs from the complainant. It is falsely contended by the accused that the complainant forcefully took the cheque book from the accused that the complainant forcefully took the cheque book from the accused and taken away the five cheque leaves from the Bank pass book and pressurized to sign on the blank cheques and the accused to save his life from the complainant and his men, has signed on the five blank cheques. The accused has made so many false serious allegations against the complainant and tried to impeach his charactered, with a ulterior motive to dupe the payment of amount involved in the said cheque, hence the complainant denied the entire false allegations made against him in the petition.

6. The complainant further contended that he has rightly filed the present case against the accused and produced all the relevant documents in support of his contention and the Hon'ble Court has rightly taken the cognizance as per law and issued the summons against the accused for the offence punishable under section 138 of NI Act.

7. Before taking the cognizance and issuance of summons to the accused, the Hon'ble Court examined the complainant and taken into consideration all the material documents filed by the complainant as per law. The accused has not make out any of the grounds to consider his petition. The petition of the accused is merit less, The petition filed under section 245 Cr.P.C is not maintainable at this stage. This Hon'ble Court has got no jurisdiction to recall its own order of taken cognizance and issuing the summons to the accused. The allegation of the accused cannot be a ground for discharge when the complainant has clearly furnished the details of the cheque of the accused in the demand notice and compliant and produced original cheque with this case. Hence, the complainant prayed to reject the application.

8. Heard and perused the records.

9. The only point would arise for determination is:

1. Whether the present application filed by accused is maintainable?

2. What Order?

10. My answer to the said points:

Point No.1 : In the Negative

Point No.2 : As per final order for the following:

:R E A S O N S:

Point No.1:

11. Admittedly the complainant has filed complaint under Sec.138 of N.I. Act against the accused. The accused requested the complainant to advance interest free hand loan for improvement of his garments business. Accordingly the complainant has deposited Rs.1,42,00,000/- in the account maintained by the accused at Kotak Mahindra Bank Limited, Balkampet Road Branch Ameerpet on different dates i.e., during the month of June, August and September 2019. To discharge his liability the accused issued four post dated cheuques on 28-07-2020 and also executed agreement for repayment of hand loan on 200/- Rs. Stamp paper. The

complainant presented the aforesaid four cheques bearing No.000362 for Rs. 35,00,000/-, 000264 for Rs. 37,00,000/-, 000267 for Rs. 35,00,000/- and 000268 for Rs. 35,00,000/- dated 16-09-2020 drawn on Kotak Mahindra Bank Limited, Balkampet Road Branch Ameerpet thorugh his Banker Aix Bank Bidar branch, but the said cheques were returned unpaid by the bank of the accused with return memo dated:17-09-2020 with remarks as “**FUNDS INSUFFICIENT” .** Therefore on receipt of the said intimation of dishonor of cheques the complainant through his advocate got issued a Demand notice dated 08-10-2020 to the accused as required under the provisions of section 138 of Negotiable Instruments Act, calling upon the accused to pay the amount involved in the said unpaid cheques within a period of 15 days from the date of service of notice failing which the complainant will be take a legal action against him. The said notice was duly served on accused on 10-10-2020, 12-10-2020 and 14-10-2020 instead of payment the accused has given reply by narrating false and baseless facts.

12. The complainant has complied with the mandatory provisions of the Act the cheque is dishonored by the bank on 17-09-2020 and the intimation thereof is

given to the complainant by his banker on 17-09-2020 and the notice of demand dated: 08-10-2020 was issued to the accused and it is served upon the accused on 10-10-2020 and from the said date of service of notice the grace period of 15 days stood expired on 25-10-2020. hence the complaint being filed is well within the period of limitation.

13. The counsel for the accused argued that Sec. 138 of N.I. Act ingredients is not attracted and it is the abuse the process of law. The cheques have not been issued by the accused and the complainant forcefully took the cheuque book from the accused bag and he taken away five cheuque leaves and threatened him with dire consequences and pressurized him to sign on blank cheques. Hence prayed to discharge the accused in accordance with law.

14. On the other hand the complainant counsel argued that, in the present case the accused had received the court summons and appeared before the court and filed bail application, he has been enlarged on bail. At the stage this present application is not maintainable and prayed to reject the application.

15. The counsel for the Complainant has relied on a **unreported decision of Hon'ble High Court of Judicature At Madras in Criminal Revision Case No.1475 of 2003 and Crl.RC.1476 of 2003 in the case of G. Chandrakanth Vs. C.R,Umapathy,** wherein it is held that, if a Magistrate takes congnizance of an offence issues process without there being any allegation against the accused or any material implicating the accused or in contravention of provision of Sections 200 & 202, the order of the Magistrate may be vitiated, but then the relief an aggrieved accused can obtain at that stage is not by invoking section 203 of the Code because the Criminal Procedure Code does not contemplate a review of an order. Hence in the absence of any review power or inherent power with the subordinate criminal courts, the remedy lies in invoking Section 482 of Code.

In this regard it is useful to cite the judgment of the Hon'ble High Court of Karnataka in Criminal Petition No.**5327/09 dated 16/07/2013 in the case of Servesh Kumar Mathur V/s Mr. Mukesh Gupta and another,** wherein observed the above cited rulings of Hon'ble Apex Court and it is held that, once a plea is recorded in a summons case it is not open to the accused person to seek discharge as the case involving a summons case is covered by Chapter XX Cr.P.C which does not contemplate a stage of discharge like section 239 which provides for discharge in a warrant case. It is further held that therefore once the plea of the accused is recorded under section 252 of Cr.P.C, the procedure contemplated under Chapter XX has to be followed which is to take the trail to its logical conclusion . The only remedy available to an aggrieved accused is to challenge the order under Section 482 of Cr.PC. In the case on hand the accused after receiving the summons from this Court and after recording of plea, sought his discharge by filing application under section 245 of Cr.P.C. On face of it, the application is not maintainable.

16. Section 200 Cr.P.C. contemplates examination of complainant and the witness by the magistrate while taking cognizance of an offence on complainant and section 202 Cr.P.C. contemplates postponement of issue of possess against the accused, if the magistrate thinks it fit to inquiry in to the case by himself or direct investigation to be made by the police officer for the purpose deciding whether or not there is sufficient ground for proceeding and after such investigation or inquiry, if the magistrate

finds no sufficient ground for proceeding he can dismiss the complainant by recording the reasons under section 203 of the Court. If there is sufficient ground for proceeding the Magistrate shall take cognizance of an offence in any one of the three modes referred to supra and he shall issue process by way of summons u/s 204 of the Court, if the summons case or shall issue a warrant if it a warrant case and in none of the above stages the accused is heard.

17. To put it in other words in what ever mode the cognizance of offence is taken by the magistrate the process can be issue only u/s 204 of the court. In chapter XX of Cr.P.C. deals with trial of summons cases by the magistrate u/s 251 to 259 Cr.P.C. and it is relevant note that no provision to discharge the accused is provided. Only u/s 258 Cr.P.C. the power to stop proceedings in certain case is provided that i.e., limited to summons case instituted otherwise than upon complaint i.e., the cases mention in section 190(1)(b) and (c) on which cognizance is taken upon a police report or upon other information or own knowledge of the magistrate. Hence the power U/s 258 Cr.P.C. cannot be invoked in any summons case instituted on a complaint or facts which is

stipulated in section 190 (1)(a) of Cr.P.C.

18. The proceeding u/s 138 of N.I. Act being summons case, instituted on a complaint cannot be stopped by invoking the power u/s 258 Cr.P.C. In short there is no provision providing for discharge of the accused in a summons case. Complaint under Sec.138 of NI Act is not to be tried as case as a trial of the warrant case, instituted otherwise than on a police report. Hence, the trial is to proceed as per procedure prescribed for law for summary cases.

19. In the present case the accused denied the issuance of cheque. Moreover after issuance of process the accused appeared before this court and enlarged on bail, now this case is posted for plea. Whether the complainant has filed false case or not has to be looked into in the full-pledged trial. Now the complainant has made out the prima-facie material to proceed with case. Further the accused has not made out any sufficient grounds to discharge him in the alleged offence. The present application is not maintainable in a complaint cases. Hence, the application filed by the accused is devoid of merits. Therefore, I answer point No.1 in the Negative.

Point No.2:

20. For the foregoing reasons stated therein, in view of my findings, point No.1, I proceed to pass the following;

ORDER

The application filed by the accused under Sec.245(1) of Cr.P.C is hereby rejected with cost of Rs.500/-.

(Dictated to the stenographer on computer, corrected and then pronounced by me in the open court on this the 07th day of June-2023.)

(Abdul Khadar)
Addl. Sr. Civil Judge & J.M.F.C
BIDAR.

ORDER PRONOUNCED IN THE OPEN COURT

VIDE SEPARATE SHEET

ORDER

The application filed by the accused under Sec.245(1) of Cr.P.C is hereby rejected with cost of Rs.500/-.

Addl. Sr. Civil Judge & J.M.F.C
BIDAR.