



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE R. NATARAJ

CRIMINAL PETITION NO. 4606 OF 2018

BETWEEN:

THIPPESWAMY NAGARAJ
S/O TIPPESWAMY
AGED ABOUT 39 YEARS
FLAT NO.11021,
SOBHA ASPIRE APARTMENT
OPP. METRO STATION
NAGASANDRA POST
BANGALORE - 560 073.

...PETITIONER

(BY SMT. SUMAN HEGDE, ADVOCATE)

AND:

HOUSING DEVELOPMENT FINANCE
CORPORATION LTD., (HDFC LTD)
NO.51, HDFC HOUSE, KASTURBA ROAD,
BANGALORE - 560 001
REPRESENTED BY ITS POWER OF ATTORNEY HOLDER/
ASST. MANAGER -CREDIT RISK MANAGEMENT, LEGAL
SRI. PRASANNA K.C.,
S/O K.L.CHANDRASHEKAR
AGED ABOUT 40 YEARS

...RESPONDENT

(BY SMT. K.V.HARSHITHA RAJ, ADVOCATE FOR
SRI. SHIVASHANKARA A., ADVOCATE)

THIS CRL.P IS FILED UNDER SECTION 482 OF THE CODE OF
CRIMINAL PROCEDURE, 1973 PRAYING TO QUASH THE
PROCEEDINGS INITIATED BY THE ORDER OF TAKING COGNIZANCE
AND ISSUANCE OF SUMMONS DATED 20.11.2017 IN

Digitally
signed by
HEMALATHA J
Location:
HIGH COURT
OF
KARNATAKA



C.C.NO.29823/2017 ISSUED BY THE XXV ADDL.C.M.M., BENGALURU (ANNEXURE-A AND B COMPLAINT COPY AND SUMMONS RESPECTIVELY) TO THE PETITIONER AND TO DISMISS THE COMPLAINT FILED BY THE RESPONDENT FOR THE OFFENCE PUNISHABLE UNDER SECTION 138 OF N.I. ACT IN PCR DATED 20.11.2017 ON THE FILE OF XXV ADDL.C.M.M., BENGALURU BY ALLOWING THIS CRL.P. WITH COSTS THROUGHOUT.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE R. NATARAJ

ORAL ORDER

The petitioner has called in question the order dated 20.11.2017 passed by the XXV Additional Chief Metropolitan Magistrate, Bangalore, in C.C.No.29823/2017 taking cognizance of an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (henceforth referred to as 'the NI Act') and issuing process. The petitioner has sought for dismissal of the private complaint filed by the respondent alleging the commission of an offence punishable under Section 138 of the NI Act.

2. The respondent filed a private complaint alleging the commission of an offence by the petitioner punishable



under Section 138 of the NI Act. The sworn statement in the private complaint was recorded and the trial Court took cognizance and issued process vide order dated 20.11.2017. The petitioner being aggrieved by the same is before this Court.

3. The petitioner contends that he had availed housing loan from the respondent to purchase an apartment developed by Ramky Estates and Farms Ltd. He contends that a tripartite agreement was entered into between him, the respondent and Ramky Estates and Farms Ltd., dated 27.02.2014 in terms of which, it was agreed as follows:

"E) In the event of cancellation of allotment/ booking/allocation of the flat by Borrower or Builder for whatsoever reason or in the event of Builder not executing-registering the sale deed in favour of Borrower within the stipulated time or in an event of litigation affecting the property/Project/flat, Builder undertakes to promptly and immediately refund the entire flat sale consideration amount received by Builder (from both, Borrower and HDFC) to HDFC, notwithstanding whether the flat is resold or not. Borrower hereby irrevocably authorise Builder to directly pay the said flat sale consideration amount to HDFC without requiring any further consent or authorisation for the same.



F) Upon receipt of the flat sale consideration amount from Builder, HDFC shall after deducting the outstanding loan amount (with interests, charges thereon) due to HDFC towards the closure of Borrower's loan, refund the surplus, if any, to Builder or Borrower as the case may be, to this effect Builder would have taken necessary permissions from Borrower (including his/her legal heirs and successors, if applicable)."

4. He contends that the allotment of the flat in question was cancelled on 20.12.2016. Therefore, the respondent was bound to follow up with Ramky Estates for the outstanding loan amount. He contends that a perusal of the entire private complaint would show that the respondent has suppressed the tripartite loan agreement and also has not mentioned the steps taken by it to pursue Ramky Estates for refund of the amount.

5. Under the circumstances, he prays that the order taking cognizance and issuing process be interfered with and the private complaint filed by the respondent be dismissed.

6. (i) The learned counsel for the petitioner reiterated the above contentions and submitted that the cancellation of the allotment was intimated to the petitioner by



Ramky Estates on 28.11.2016 and a copy of the e-mail was marked to the concerned official of the respondent. Likewise, the petitioner had replied to the mail on 23.12.2016, informing Ramky Estates to pay the outstanding loan with interest to the respondent. A copy of this mail was also marked to the official of the respondent. The respondent while replying to an enquiry made by the petitioner for prepaying the loan, addressed an e-mail calling upon the petitioner to pay a sum of Rs.41,28,901/-.

(ii) She therefore contends that the initiation of proceedings for prosecuting the petitioner for an offence under Section 138 of the NI Act is wholly unwarranted. Besides this, she contends that the petitioner has paid pre-EMIs. Therefore, he is entitled to a refund of the excess money after adjusting the outstanding loan amount. She also contends that the petitioner has filed a case before the Consumer Forum against Ramky Estates as well as the respondent for not taking action to close the loan account and that the case is listed for orders. Thus, she submits that the impugned prosecution of the petitioner for offence punishable under Section 138 of the



Negotiable Instruments Act is wholly mischievous and liable to be interfered with.

7. The learned counsel for the respondent did not dispute the fact that a tripartite agreement was entered into between the petitioner, respondent and Ramky Estates on 27.02.2014, in terms of which, in the event of cancellation of the booking, Ramky Estates was bound to refund the amounts deposited to HDFC Bank directly. She however contended that the petitioner is yet to make some more payments towards the accrued interest and hence the petition filed under Section 138 of the NI Act cannot be dismissed.

8. I have considered the submissions made by the learned counsel for the petitioner and the learned counsel for the respondent.

9. The respondent has deliberately suppressed the fact that a tripartite agreement was entered into between the petitioner and the respondent as well as Ramky Estates and such tripartite agreement evidenced the manner of liquidating the outstanding in case the allotment is cancelled. When the parties have agreed to conduct themselves in a particular



manner, the respondent cannot take advantage of the provisions of the NI Act and prosecute the petitioner for an offence punishable under the NI Act. Therefore, as rightly contended by the learned counsel for the petitioner, the prosecution of the petitioner was wholly mischievous and a clear abuse of the process of law and Courts.

10. In view of the above, the following order is passed:

ORDER

- i. This petition is ***allowed***;
- ii. The order dated 20.11.2017 passed by the XXV Additional Chief Metropolitan Magistrate, Bangalore, in C.C.No.29823/2017 taking cognizance of an offence punishable under Section 138 of the NI Act and issuing process to the petitioner is quashed. Consequently, the private complaint filed by the respondent in C.C.No.29823/2017 pending trial before the XXV Additional Chief Metropolitan Magistrate, Bangalore, alleging commission of an offence by



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the petitioner under Section 138 of the Negotiable
Instruments Act, 1881, is ***dismissed.***

**Sd/-
(R. NATARAJ)
JUDGE**

BKN/List No.: 1 Sl No.: 5