

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1771 OF 2010

S. Krishnamoorthy

... Appellant

Versus

Chellammal

...Respondent

J U D G M E N T

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”).

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

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 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.

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 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 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/- was paid as advance and part of consideration, and balance 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.

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 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.

6. In ***Padal Venkata Rama Reddy alias Ramu v. Kouvuri 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: -

¹ (2011) 12 SCC 437

“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.

.....J.
[Dipak Misra]

.....J.
[Prafulla C. Pant]

New Delhi;
March 31, 2015.

Reportable

ITEM NO.1A
(For Judgment)

COURT NO.3

SECTION IIA

S U P R E M E C O U R T O F I N D I A RECORD OF PROCEEDINGS

Criminal Appeal No(s). 1771/2010

S.KRISHNAMOORTHY

Appellant(s)

VERSUS

CHELLAMMAL

Respondent(s)

Date : 31/03/2015 This appeal was called on for pronouncement of judgment today.

For Appellant(s) Mr. Senthil Jagadeesan,Adv.

For Respondent(s) Mr. P. N. Ramalingam,Adv.

Hon'ble Mr. Justice Prafulla C. Pant pronounced
the reportable judgment of the Bench comprising His
Lordship and Hon'ble Mr. Justice Dipak Misra.

The appeal is allowed in terms of the signed
reportable judgment.

(Neeta)

Sr. P.A.

(Signed reportable judgment is place on the file)

(H.S. Parasher)

Court Master