Reserved on : 11.09.2024
Pronounced on : 21.10.2024

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF OCTOBER, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.331 OF 2022

BETWEEN:

SRI LALJI KESHA VAID
S/O KESHA VAID
AGED ABOUT 38 YEARS
VENUS OFFICE AUTOMATION
NO.23/1, 2ND MAIN ROAD
9TH CROSS, SAMPANGIRAMANAGAR
BENGALURU – 560 027.

... PETITIONER

(BY SRI V.SUDHAKAR, ADVOCATE)

AND:

SRI DAYANAND R.,
S/O LATE PARASURAM
AGED ABOUT 67 YEARS
NO.41, 6TH CROSS, PAI LAYOUT
HULIMAVU, BANNERGHATTA ROAD
BENGALURU – 560 076.

... RESPONDENT

(BY SMT. VIJETHA R.NAIK, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH/SET ASIDE THE CRIMINAL PROCEEDINGS IN C.C.NO.8737/2020 PENDING ON THE FILE OF THE HON'BLE COURT OF XXXVI ADDL.C.M.M., BENGALURU.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 11-09-2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner is before this Court calling in question proceedings in C.C.No.8737 of 2020 pending before the 36th Additional Chief Metropolitan Magistrate, Bangalore City registered by the respondent under Section 200 of the Cr.P.C. for offence punishable under Section 138 of the Negotiable Instruments Act, 1881 ('the Act' for short).

2. Heard Sri Amaresh A. Angadi / Sri V. Sudhakar, learned counsel appearing for the petitioner and Smt. Vijetha R Naik learned counsel appearing for the respondent.

3. The facts, in brief, as borne out from the pleadings are as follows:-

The petitioner and respondent were working together at the office of Hi Tech Computer as Stationary House Keeping Suppliers and are said to be knowing each other for a long time. In the year 2014, the petitioner establishes an office in the name and style of Venus Office Needs in the name of his brother-in-law. In 2017 the petitioner starts his own independent office in the name and style of Venus Office Automation. The respondent joins the office of the petitioner during this period and continued to work as stationary and housekeeping supplier. On 15-11-2018, it is the narration that the petitioner and the respondent go to the market for purchase of materials and were short of ₹5,00,000/-. The respondent tendered ₹5,00,000/- to the petitioner and after returning to the office, for ₹5,00,000/- that was tendered, the petitioner issued a cheque which was a blank cheque signed in Gujarati. The respondent is said to have stated that he would fill up the cheque for ₹5,00,000/- and accordingly received the blank cheque from the petitioner. The cheque is neither filled in nor presented. On 05-09-2019 the

respondent is said to have requested the petitioner to give cash in lieu of ₹5,00,000/- cheque as his health has deteriorated and needed money for surgery. The respondent is said to have assured that he would return the blank cheque on payment of ₹5,00,000/- by way of cash. It is averred that the petitioner has paid cash of ₹5,00,000/- to the respondent on 05-09-2019 and requested for return of blank cheque. But, the blank cheque is not returned.

4. Dispute between the two arose and the respondent institutes civil suit in O.S.No.3210 of 2020 seeking return of the amount along with interest. Simultaneously, the respondent files private complaint before the learned Magistrate invoking Section 200 of the Cr.P.C. in P.C.R.No.7814 of 2020. The learned Magistrate after taking cognizance and recording sworn statement issues summons to the petitioner. The petitioner receives summons on 01-04-2021. Challenging issuance of summons and entire proceedings in C.C.No.8737 of 2020, the petitioner is knocking the doors of this Court in the present petition.

5. The learned counsel appearing for the petitioner submits that once having taken the step of instituting a civil suit for the purpose of recovery of money of the very sum and the Court decreeing the suit even at a later point in time, would bar setting criminal law into motion for the offence punishable under Section 138 of the Act. The learned counsel would submit that entire proceedings would become an abuse of the process of law and seeks quashment of the same.

6. Per contra, the learned counsel appearing for the respondent would vehemently refute the submissions to contend that instituting a civil suit is for the purpose of damages and mere institution of civil suit would not bar criminal law being set into motion, for dishonor of a cheque that was presented for realization on account of non-payment. The learned counsel would seek dismissal of the petition.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

8. The afore-narrated facts are as borne out from the records. The issue now would be whether the subject criminal case in C.C.No.8737 of 2020 should be permitted to be continued in the teeth of O.S.No.3210 of 2010 being filed for recovery of money that was paid. The transaction between the two is a matter of record, as it is the narration in the complaint or in the petition. The respondent institutes O.S.No.3210 of 2020. The averments in the plaint which are germane to be noticed are as follows:-

> "…. …. ….
>
> 7. It is submitted that after six months i.e., in the month of March 2020, the plaintiff approached the defendant seeking for return of his money. The defendant due to various reasons prolonged the return of money to the plaintiff and however, issued a cheque bearing No.814653 drawn on Yes Bank, BVK Iyenger Road Branch, Bengaluru, dated 06-05-2020 and requested the plaintiff to deposit the same on 12-06-2020 with a solemn promise that there would be funds in his account to ensure payment of the said cheque upon presentation.
>
> … …. …
>
> 12. The cause of action for filing this suit arose on September 2019 when the plaintiff paid ₹35/- lakhs to the defendant to come to his rescue with an assurance with the same would be repaid within 6 months, during March 2020 when the plaintiff requested the defendant to repay back the money, on 06-05-2020 when the defendant issued a cheque bearing No.815643 towards discharge of the loan amount received from the plaintiff, on 12-06-2020 when the said cheque was presented for payment, on 16-06-2020 when the said cheque was returned unpaid and on 01-07-2020 when the plaintiff caused the issuance of legal notice to the defendant to repay the same within a period of 15 days. The said cause of

action arises within the jurisdiction of this Hon'ble Court and this Hon'ble Court has pecuniary jurisdiction to try and adjudicate the same.

… … …

P R A Y E R

WHEREFORE, the plaintiff must humbly prays that this Hon'ble Court be pleased to pass a judgment and decree:

(a) Directing the defendant to pay a sum of ₹38,50,000/- along with future interest @ 12% p.a. from the date of filing of the suit till the date of realization in the interest of justice.

(b) Award cost of the suit in the interest of justice and equity."

The prayer of the respondent in the suit is for a direction to pay a sum of ₹38,50,000/- along with interest at 12% p.a. The calculation has begun from the date on which the amount was paid to the petitioner and the cheque was issued in lieu of return of the amount. The petitioner files his written statement before the concerned Court denying the allegation that he had issued the cheque even. During the pendency of the money suit, the respondent invokes Section 200 of the Cr.P.C. and registers a complaint before the learned Magistrate for dishonor of the cheque allegedly issued by the petitioner. The averments in the complaint are germane to be noticed and they read as follows:

"…. …. ….

6. It is submitted that going by acquaintances of the complainant with the accused for over 10 years coupled with an urgent need for money by the accused, the complainant and his wife extended a loan of ₹35,00,000/- during September 2019, the amount lent to the accused as short-term loan is the complainants and his wife's hard-earned money.

7. It is submitted that the accused had given assurances to the complainant to repay the loan within 6 months from September, 2019.

8. It is submitted that the complainant had approached the accused seeking for repayment of the loan amount and the accused issued a cheque bearing No.814653, drawn on YES Bank, ATPAR – Branch dated 06.05.2020, to the complainant towards the discharge of his liability of the accused. It is submitted that the accused requested the complainant to present the cheque on 12.06-2020 with a solemn promise that the accused would be arranging sufficient funds in his account to ensure that the same would be honored for payment upon presentation. The complainant accordingly deposited the cheque in State Bank of India, Hulimavu Branch on 12.06.2020 for encashment.

9. It is submitted that to the shock and surprise of the complainant, the cheque issued by the accused for discharge of the loan, was returned by the Bank with a cheque return memo dated 16-06-2020 with an endorsement stating "Exceeds arrangement". It is submitted that complainant contacted the accused and informed about the bounce of the cheque and asked to pay the amount to which the accused gave evasive replies and the accused has taken no steps to repay the complainant the amounts covered under the cheque till date. The copy of the Cheque and Banker's Memo are produced herewith as **Document Nos. 1 and 2.**

Sl.No.	Particulars	Date
1.	Date mentioned on the cheque	06-05-2020
2.	Cheque presented	12-06-2020
3.	Cheque bounced and returned as "Exceeds arrangements"	16-06-2020

10. The complainant submits that having no other alternative remedy, he has got issued a legal notice dated 01-07-2020 to the address calling upon the accused to pay a sum of ₹35,00,000/- along with interest within 15 days from the date of said notice which was duly served on the accused on 02-07-2020. The office copy of the said legal notice sent to his address, postal receipt and postal acknowledgment are produced herewith as **Document Nos. 3 to 5.**

11. It is submitted that the accused despite receiving the said notice, he has not come forward to pay the amount, however the accused has sent an untenable reply with a concocted story that he had borrowed ₹5/- lakhs from the complainant and the cheque was issued as a security for the said amount. This clearly indicates that the accused has been predetermined to cheat and defraud the innocent complainant. The said reply notice is produced herewith as **Document No.6.**"

The concerned criminal Court takes cognizance of the offence on 01-09-2020. The order taking of cognizance reads as follows:

"**Date: 01-09-2020**.
Complainant by Sri. Ravi B.Naik, Advocate
For Orders:

O R D E R

This is a complaint filed against the accused for the offence punishable under Section 138 of N.I.Act. Heard the learned counsel for the complainant and perused the entire materials available on record. The complainant has filed sworn statement. It prima facie appears that, the complainant has complied all the mandatory requirements of Section 138 of N.I Act. The complainant has made out a prima facie case to proceed against the accused. Accordingly, I proceed to pass the following:

ORDER

> Register the case in C.C. against the accused in Register No.III for the offence punishable under Section 138 of N.I. Act and issue SS to accused."

The consideration of whether the complaint would be maintainable in the teeth of civil suit being pending for recovery of money need not detain this Court for long or delve deep into the matter.

9. The Apex Court in the case of ***D.PURUSHOTAMA REDDY v. K.SATEESH***[1] has held s follows:

> "…. …. ….
>
> **3.** The respondent-plaintiff filed a suit against the appellants, which was marked as OS No. 1844 of 2004, for recovery of a sum of Rs 3,09,000 with interest. In the plaint, it was averred that Shri K. Balasubramanyam (father of the respondent) and Defendant 1 (Appellant 1 herein) were good friends. Defendants 1 and 2 had been carrying on business. They approached the plaintiff through Shri K. Balasubramanyam for financial assistance and obtained a loan of Rs 2,00,000 (Rs 1,00,000 on 15-3-2001 and Rs 1,00,000 on 25-3-2001). Two promissory notes were also executed therefor.
>
> **4.** The appellant-defendants purported to be in discharge of the said debt issued two cheques bearing Nos. 3960 dated 15-3-2003 and 3959 dated 31-5-2003 drawn on Bank of India, which on presentation, were returned dishonoured. Indisputably, a complaint under Section 200 of the Code of Criminal Procedure, 1973 read with Sections 138 and 142 of the Negotiable Instruments Act, 1881 (for short "the Act"), marked as CC No. 19337 of 2003, was filed. A judgment of conviction

[1] **(2008) 8 SCC 505**

and sentence against the appellant was passed therein by an order dated 15-12-2005 sentencing him to pay a sum of Rs 2,10,000 by way of fine and in default thereof to undergo simple imprisonment for a period of three months. It was also directed that out of the said amount of fine, a sum of Rs 2,00,000 would be paid to the complainant by way of compensation in terms of Section 357 of the Code of Criminal Procedure (for short "the Code") and the remaining amount was to be payable to the State. In the said criminal proceedings, the appellants deposited a sum of Rs 31,500 on 7-2-2006, Rs 68,500 on 21-7-2006 and Rs 1,10,000 on 13-12-2006.

5. OS No. 1844 of 2004 was decreed by the trial court by a judgment and order dated 23-1-2006, ordering:

> "This suit is hereby decreed for a sum of Rs 3,09,000 (Rupees three lakh nine thousand only) with court costs and current interest at 6% p.a. on the principal amount of Rs 2,00,000 from the date of suit till realisation. The defendants are jointly and severally liable to pay the decretal amount."
>
> … … …

8. Contention of the respondent, however, is that as the said question was not and could not have been raised before the trial court, the impugned judgment is sustainable. It was furthermore urged that in view of the well-settled principle of law that pendency of a criminal matter would not be an impediment in proceeding with a civil suit, the impugned judgment should not be interfered with.

9. A suit for recovery of money due from a borrower indisputably is maintainable at the instance of the creditor. It is furthermore beyond any doubt or dispute that for the same cause of action a complaint petition under terms of Section 138 of the Act would also be maintainable."

(Emphasis supplied)

The Apex Court holds the two proceedings are maintainable. The two would be a civil suit seeking recovery of amount and a proceeding for the offence punishable under Section 138 of the Act.

The said judgment is reiterated in the case of ***VISHNU DUTT SHARMA v. DAYA SAPRA (SMT)***[2] wherein it is held as follows:

"…. …. ….

23. It brings us to the question as to whether previous judgment of a criminal proceeding would be relevant in a suit. Section 40 of the Evidence Act reads as under:

> "40. Previous judgments relevant to bar a second suit or trial.—The existence of any judgment, order or decree which by law prevents any court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such court ought to take cognizance of such suit or to hold such trial."

This principle would, therefore, be applicable, inter alia, if the suit is found to be barred by the principle of res judicata or by reason of the provisions of any other statute. It does not lay down that a judgment of the criminal court would be admissible in the civil court for its relevance is limited. (See Seth Ramdayal Jat v. Laxmi Prasad [(2009) 11 SCC 545 : (2009) 5 Scale 527] .) The judgment of a criminal court in a civil proceeding will only have limited application viz. inter alia, for the purpose as to who was the accused and what was the result of the criminal proceedings. Any finding in a criminal proceeding by no stretch of imagination would be binding in a civil proceeding.

24. In M.S. Sheriff v. State of Madras [AIR 1954 SC 397] a Constitution Bench of this Court was seized with a question as to whether a civil suit or a criminal case should be stayed in the event both are pending. It was opined that the criminal matter should be given precedence. In regard to the possibility of conflict in decisions, it was held that the law envisages such an eventuality when it expressly refrains from making the decision of one court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. It was

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[2] **(2009)13 SCC 729**

held that the only relevant consideration was the likelihood of embarrassment.

25. If a primacy is given to a criminal proceeding, indisputably, the civil suit must be determined on its own keeping in view the evidence which has been brought on record before it and not in terms of the evidence brought in the criminal proceeding. The question came up for consideration in K.G. Premshanker v. Inspector of Police [(2002) 8 SCC 87 : 2003 SCC (Cri) 223] wherein this Court inter alia held: (SCC p. 97, paras 30-31)

> "30. What emerges from the aforesaid discussion is — (1) the previous judgment which is final can be relied upon as provided under Sections 40 to 43 of the Evidence Act; (2) in civil suits between the same parties, principle of res judicata may apply; (3) in a criminal case, Section 300 CrPC makes provision that once a person is convicted or acquitted, he may not be tried again for the same offence if the conditions mentioned therein are satisfied; (4) if the criminal case and the civil proceedings are for the same cause, judgment of the civil court would be relevant if conditions of any of Sections 40 to 43 are satisfied, but it cannot be said that the same would be conclusive except as provided in Section 41. Section 41 provides which judgment would be conclusive proof of what is stated therein.
>
> 31. Further, the judgment, order or decree passed in a previous civil proceeding, if relevant, as provided under Sections 40 and 42 or other provisions of the Evidence Act then in each case, the court has to decide to what extent it is binding or conclusive with regard to the matter(s) decided therein. Take for illustration, in a case of alleged trespass by A on B's property, B filed a suit for declaration of its title and to recover possession from A and suit is decreed. Thereafter, in a criminal prosecution by B against A for trespass, judgment passed between the parties in civil proceedings would be relevant and the court may hold that it conclusively establishes the title as well as possession of B over the property. In such case, A may be convicted for trespass. The illustration to Section 42 which is quoted above makes the position clear. Hence, in each and every case, the first question which would require consideration is—whether judgment, order or decree is relevant, if relevant—its effect. It may be relevant for a limited purpose, such as, motive or as a fact in issue. This would depend upon the facts of each case."

26. It is, however, significant to notice a decision of this Court in Karam Chand Ganga Prasad v. Union of India [(1970) 3 SCC 694] , wherein it was categorically held that the decisions of the civil court will be binding on the criminal courts but the converse is not true, was overruled therein, stating: (K.G. Premshanker case [(2002) 8 SCC 87 : 2003 SCC (Cri) 223] , SCC p. 98, para 33)

> "33. Hence, the observation made by this Court in V.M. Shah case [V.M. Shah v. State of Maharashtra, (1995) 5 SCC 767 : 1995 SCC (Cri) 1077] that the finding recorded by the criminal court stands superseded by the finding recorded by the civil court is not correct enunciation of law. Further, the general observations made in Karam Chand case [(1970) 3 SCC 694] are in context of the facts of the case stated above. The Court was not required to consider the earlier decision of the Constitution Bench in M.S. Sheriff case [AIR 1954 SC 397] as well as Sections 40 to 43 of the Evidence Act."

27. Sections 42 and 43 of the Evidence Act providing for the relevance of other decrees, order and judgment read as under:

> "42. Relevancy and effect of judgments, orders or decrees, other than those mentioned in Section 41.—Judgments, orders or decrees other than those mentioned in Section 41, are relevant if they relate to matters of a public nature relevant to the inquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.
>
> 43. Judgments, etc., other than those mentioned in Sections 40 to 42, when relevant.—Judgments, orders or decrees, other than those mentioned in Sections 40, 41 and 42 are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant, under some other provision of this Act."

28. If judgment of a civil court is not binding on a criminal court, it is incomprehensible that a judgment of a criminal court will be binding on a civil court. We have noticed hereinbefore that Section 43 of the Evidence Act categorically states that judgments, orders or decrees, other than those mentioned in Sections 40, 41 and 42 are irrelevant, unless the existence of such judgment, order

> **or decree, is a fact in issue, or is relevant in some other provisions of the Act, no other provisions of the Evidence Act or for that matter any other statute had been brought to our notice."**

(Emphasis supplied)

The issue before the Apex Court was whether the conviction recorded by a criminal court would bar institution of a civil suit for recovery of money. The Apex Court holds the two are independent and can be simultaneously maintained.

10. The judgments relied on by the learned counsel for the petitioner are (i) ***SHANKU CONCRETES PVT.LTD. v. STATE OF GUJARAT –*** 2000 CRI.L.J. 1988; (ii) ***MEDMEME, LLC v. IHORSE BPO SOLUTIONS PRIVATE LIMITED.*** – AIR 2017 SC 3656; (iii) ***M.SURESH v. STATE OF ANDHRA PRADESH*** – (2018) 15 SCC 273; (iv) ***SARDAR ALI KHAN v. STATE OF UTTAR PRADESH*** – AIR 2020 SC 626, and (v) ***M/S SERVE AND VOLLEY OUTDOOR ADVERTISING PRIVATE LIMITED. v. M/S TIMES INNOVATIVE MEDIA LIMITED*** – 2019 (3) KCCR 2649. There can be no qualm about the principles so laid down by the Apex Court and this Court. Those were cases where the Apex Court stepped in to quash

criminal proceedings on the score that the civil suit has been filed for the purpose of annulling a sale deed. The issue was considered by the Apex Court to be purely civil in nature and after instituting a civil suit, the criminal law would not be set into motion. Those were not the cases where the Apex Court considered the purport of simultaneous sustenance of both the proceedings for recovery of money and for offence under Section 138 of the Act. It becomes apposite to refer to the judgment of the coordinate Bench of this Court in ***CREF FINANCE LIMITED v. SREE SHANTHI HOMES PRIVATE LIMITED***[3]. The coordinate Bench following the judgments of the Apex Court has held as follows:

> "…. …. ….
>
> **15.** A feeble attempt is made by the respondents and it is contended by Learned Counsel that both the civil and criminal cases for recovery of dues and dishonour of cheques cannot be maintained. On this aspect of the matter, Learned Counsel for the appellant has placed reliance on the decision of the Apex Court, D. Purushotama Reddy v. K. Sateesh [(2008) 8 SCC 505] . The appellant has filed O.S. No. 15045/01; wherein he has sought for a decree against the respondents for a sum of Rs. 9,20,59,032-00. Simultaneously, he filed the complaint before the Trial Court to initiate action for the offence punishable under Section 138 of the Act. **There is no dispute so far as this position is concerned. The Apex Court in the aforesaid decision has held "simultaneous civil suit and complaint case under Section 138 of the N.I. Act for the same cause of action are maintainable". Therefore, the respondents**

[3] **2013 SCC OnLine Kar.7562**

cannot take any advantage of filing the suit by the appellant for recovery of dues."

(Emphasis supplied)

In the light of the law as laid down by the Apex Court and followed by the coordinate Bench *supra*, the irresistible conclusion would be that the complaint for offence punishable under Section 138 of the Act would be maintainable, notwithstanding recovery proceedings initiated by institution of a civil Suit, though both spring from the same cause of action. Since the entire petition is framed on the aforesaid ground and the ground is answered to be unsustainable, there is no warrant to interfere in the criminal proceedings set into motion by the respondent.

11. In the result, finding no merit in the petition, the petition stands rejected.

Consequently, I.A.No.2 of 2022 also stands disposed.

Sd/-
(M. NAGAPRASANNA)
JUDGE

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CT:SS