

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.07.2015

DELIVERED ON : 29.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.Nos.10948 of 2015 and 7083 of 2014

S.Velan ... Petitioner in both Crl.OPs.

Vs

R.Srinivasan ... Respondent in both Crl.OPs.

Prayer: Criminal Original Petition No.10948 of 2015 filed under Section 482 Cr.P.C. to order Judicial Magistrate No.2, Salem to keep in abeyance the proceedings in C.C.No.385 of 2012 on its file till the disposal of the Crl.O.P.No.7083 of 2014 on the file of this Court.

Prayer in Criminal Original Petition No.7083 of 2014 filed under Section 482 Cr.P.C. to set aside the order dated 05.01.2013 in CMP No.7812 in C.C.No.9 of 2013 on the file of the Judicial Magistrate No.2, Salem as confirmed in the CRP No.12 of 2013 dated 29.08.2013 on the file of the 3rd Additional District and Sessions Judge, Salem.

For Petitioner Mr.S.Kalyanaraman

For Respondent Mr.B.Vasudevan

C O M M O N O R D E R

For the sake of convenience, the parties will be referred to by their name.

2. It is the case of R.Srinivasan that Velan had borrowed a sum of Rs.2 lakhs on 02.01.2008 as hand loan, promising to repay the amount with interest and towards the said loan, Velan had given a cheque dated 17.06.2010, which when presented for clearance was dishonoured and after issuance of statutory notice under Section 138 of the Negotiable Instruments Act, R.Srinivasan lodged a complaint in C.C.No.385 of 2012 before the Judicial Magistrate No.2, Salem, for an offence under Section 138 of the Negotiable Instruments Act against Velan. Velan filed a private complaint against Srinivasan alleging that, the impugned cheque was stolen by R.Srinivasan and a false prosecution has been lodged under Section 138 of the Negotiable Instruments Act. The private complaint was taken on file in CMP No.7812 of 2012 by the learned Judicial Magistrate No.2, Salem and

Velan and another witness were examined under Section 200 Cr.P.C. and the private complaint was dismissed by the learned Judicial Magistrate No.2, Salem on 05.01.2013 under Section 203 Cr.P.C. Aggrieved by the order, Velan filed CrI.R.P. No.12 of 2013 before the Sessions Court, Salem and the same was dismissed on 29.08.2013, challenging which the present petition [CrI.O.P.No.7083 of 2014] under Section 482 Cr.P.C. has been filed.

3. The revisional jurisdiction of the Sessions Court is concurrent with the revisional jurisdiction of this Court and if a person elects to go to the Sessions Court, he will be precluded from approaching this Court under Section 397(3) Cr.P.C. Therefore, on this short ground alone, this petition requires to be dismissed. However, a petition under Section 482 Cr.P.C. is maintainable under extraordinary circumstances if it is shown that, there has been a manifest illegality committed by the Sessions Court resulting in injustice to the party. Mr.S.Kalyanaraman, learned counsel for the petitioner submitted that the learned Magistrate and the Sessions Court had exceeded in their jurisdiction by going into extraneous facts while dismissing the private complaint under Section 397(3) Cr.P.C.

4. On a careful reading of the order dated 05.01.2013 passed by the learned Judicial Magistrate No.2, Salem, this Court finds that the learned Magistrate has not in any way exceeded in her jurisdiction. She has dismissed the private complaint on the ground that, the complaint and the sworn statement themselves lack necessary particulars for issuing process against the accused. The learned Magistrate has relied upon document no.1 that has been filed along with the private complaint, which is a letter submitted by Velan to the co-operative Bank for "stop payment of the cheque", wherein he has stated that, he had lost the cheque under unforeseen circumstances. This admission by him negates his contention that the said cheque was stolen by R.Srinivasan. Therefore, this Court finds no reason to invoke the extraordinary jurisdiction under Section 482 Cr.P.C. to set aside the orders passed by the two Courts below. In D.P.Gulati vs. State of Uttar Pradesh [(2015) 4 Scale 373], the Hon'ble Supreme Court has even quashed a private complaint of a similar nature filed by an accused facing prosecution of an offence under Section 138 of the Negotiable Instruments Act on the ground that it is a clear abuse of process of law. In this case also, this Court finds that there is no bona fide in the private complaint filed by Velan and it was rightly dismissed by the Court below. In the result, this petition [CrI.O.P.No.7083 of 2014] is devoid of merits and accordingly, the same is dismissed.

5. The prayer in Crl.O.P.No.10948 of 2015 is that, the trial in C.C.No.385 of 2012 on the file of the Judicial Magistrate No.2, Salem should be kept in abeyance pending disposal of Crl.O.P.No.7083 of 2014. Since Crl.O.P.No.7083 of 2014 has been dismissed, Crl.O.P.No.10948 of 2015 is also dismissed.

gms

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. Judicial Magistrate No.2, Salem
 2. The III Addl. District and Sessions Judge, Salem.
 3. The Public Prosecutor High Court, Madras.
- + 1 cc to Mr.S.Kalyanaraman, Advocate SR 39019
- + 2 ccs to Mr.B.Vasudevan, Advocate SR 39019

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and 7083 of 2014

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