

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2015

CORAM

THE HON'BLE MR. JUSTICE R.S.RAMANATHAN

Crl.O.P.No.23900 of 2010
and M.P.No.1 of 2010

R.Sivasubramaniam

...Petitioner

vs.

V.Vino

...Respondent

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code praying to call for the records and quash proceedings in STC.No.359 of 2010 pending trial before the learned Judicial Magistrate No.III, Coimbatore.

For Petitioner : Mr.O.R.Mahesvaran

For Respondent : Mr.D.Shivakumaran

ORDER

This petition has been filed, seeking to quash the proceedings in STC.No.359 of 2010 pending trial before the learned Judicial Magistrate No.III, Coimbatore.

2. The petitioner is arrayed as the first accused in STC.No.359/2010 on the file of the Judicial Magistrate No.III, Coimbatore. The respondent herein filed the above said case under Section 138 of the Negotiable Instruments Act, 1881 against the petitioner and his son, who has been arrayed as the second accused.

3. The learned counsel for the petitioner submitted that even as per the complaint, cheque was issued by the second accused and therefore, prosecution against the petitioner is not maintainable and hence, this petition is liable to be allowed.

4. The learned counsel for the respondent/complainant submitted that though cheque was issued by the second accused, the promissory note was executed by the first accused and towards discharging the promissory note the cheque was issued by the second accused and therefore, both the accused 1 and 2 are liable to be prosecuted.

5. I am unable to accept the contention of the learned counsel for the respondent/complainant. Admittedly, the cheque was issued by the second accused and prosecution can be launched only against the second accused, who has issued the cheque and not against the petitioner/first accused.

6. Hence, this Criminal Original Petition is allowed and the proceedings in STC.No.359/2010 on the file of the Judicial Magistrate No.III, Coimbatore is quashed insofar as the petitioner is concerned. Consequently, connected miscellaneous petition is closed.

jvm

-s/d-

Assistant Registrar (CO)

Dt:6/4/2015

True Copy

Sub-Assistant Registrar

To

The Judicial Magistrate No.III,
Coimbatore.

+ 1 cc to Mr.O.R.Mahesvaran, Advocate SR 16636

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