

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 30.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.O.P.No.18908 OF 2010 &  
M.P.Nos.1 and 2 of 2010

Radhakrishnan

.. Petitioner

versus

Arokianathan

.. Respondent

Prayer: This petition is filed under Section 482 Cr.P.C., praying to call for the records in Calendar Case No.33 of 2008 pending on the file of the learned II Additional District Munsif, Puducherry and quash all further proceedings.

For Petitioners : Mr.P.Suresh Babu

For Respondent : Mr.Baskaran

ORDER

This petition is filed, praying to call for the records in Calendar Case No.33 of 2008 pending on the file of the learned II Additional District Munsif, Puducherry and quash all further proceedings.

2. For the sake of convenience, the parties will be referred to their rank assigned in the complaint.

3. On the complaint launched by the complainant, the

prosecution under Section 138 of Negotiable Instruments Act has been initially instituted against the accused, on the file of the learned Judicial Magistrate No.I, Puducherry, which later was transferred to the file of II Additional District Munsif, Puducherry and renumbered as in C.C.No.33 of 2008. Pending the same, the accused has come forward with the present petition, seeking to quash the proceedings.

4. Heard the learned counsel for the accused and the learned counsel for the complainant.

5. It is the contention of learned counsel for the accused that the complaint does not even disclose the details of the debt, in discharge of which, the cheques were said to have been issued.

6. Per contra, the learned counsel for the complainant submitted that there are sufficient materials in the complaint for the prosecution to proceed against the accused and disputed questions of fact cannot be looked into in a quashing petition.

7. This Court gave its anxious consideration to the rival submissions.

8. In the complaint lodged by the complainant, in para 1, it is stated as follows:

“1. Accused became monetarily indebted to complainant on account of Hand Loan. Thus accused drew and issued two cheques to & in favour of Complainant as discharge of said Debt with

representations & assurances that said Cheques would be honoured without fail.”

Apart from this stray statement that the accused is monetarily indebted to the complainant on the account of hand loan, the complainant has not given any description in the body of the complaint as to what amount, the accused is actually due to the complainant and when it was borrowed, etc. This Court called for the records from the trial Court to find if atleast in sworn to statement, the complainant had given any details. On a reading of the sworn to statement, it reveals that the complainant has not given any details of the debt i.e. due to him by the accused. Even in the statutory notice, dated 20.8.2003 issued by the complainant under Section 138 N.I. Act, it is stated as follows:

“1. You are monetarily indebted to our client on account of hand loan. Thus you drew & issued Three Cheques respectively for Rs.1,00,000/- (Rupees One Lakh only) & Rs.65,000/- (Rupees Sixty Five thousand only) & in favour of our client as discharge of said Debt with representations & assurances that said Cheques would be honoured without fail.”

P.N.PRAKASH, J.

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Had the complainant, atleast given the details of the debt in the statutory notice, then this Court will certainly loath to interfere because the statutory notice can be treated as part and parcel of the complaint.

9. Essentially, there should be two components for initiating the prosecution under Section 138 of N.I. Act, viz., firstly, there should be a debt and secondly, in discharge of the same, cheques should be issued. Therefore, it is imperative for the complainant to make necessary averments in the complaint about the debt and not merely saying that the accused is monetarily indebted to him on the account of hand loan.

10. In view of the above, the prosecution against the accused in C.C.No.33 of 2008 pending on the file of the II Additional District Munsif, Puducherry, is liable to be quashed and accordingly, the same is quashed.

In the result, the Criminal Original Petition is allowed. Consequently, connected MPs are closed.

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30.09.2016

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