



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.08.2015

CORAM:

**THE HONOURABLE MS. JUSTICE R.MALA**

Criminal Original Petition (MD) No. 15300 of 2015  
and  
M.P (MD) Nos. 1 and 2 of 2015

NA.Varatharajan

... Petitioner

Vs.

S.Venkatesan

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 praying to call for the records pertaining to S.T.C.No.355 of 2015 on the file of the learned Judicial Magistrate No.IV, Trichy and quash the same.

For Petitioner : Mr.K.Sivabalan

For Respondent : Mr.K.Anbarasan,

Government Advocate (Crl. Side)

ORDER

The quash petition has been filed by the petitioner seeking to quash the proceedings in S.T.C.No.355 of 2015 on the file of the learned Judicial Magistrate No.IV, Trichy.

2. The learned counsel for the petitioner would submit that the petitioner herein has been facing the criminal case under Section 138 of the Negotiable Instruments Act on the basis of the complaint given by the respondent/complainant.

3. In the complaint it is stated that the petitioner herein is doing a real estate business and borrowed a sum of Rs.50,00,000/- for his business purpose and for discharging the same, he issued a cheque, dated 07.01.2015 bearing Cheque No.358178, which was presented in a Bank on 30.01.2015 for encashment. But, the same was returned on 10.02.2015 with an endorsement that 'accounts closed'. After issuance of notice, the respondent herein has preferred a complaint. After receipt of summons, the petitioner herein, who is the accused in this case, has come forward with this petition to quash the said proceedings.

3. The learned counsel for the petitioner would submit that the petitioner has borrowed some amount from the respondent for business purpose and at that time, he handed over the blank cheques. Earlier, the respondent preferred a cheque case in S.T.C.No.397 of 2012 by filing up the name of his wife Vijaya in cheque dated 15.08.2011 bearing Cheque No. 310378, which was entered into compromise and the same was withdrawn. He has also filed a document stating that the respondent herein himself has filed S.T.C.No.397 of 2012, which was also withdrawn.



4. In order to prove the same, the learned counsel for the petitioner has produced the materials in the form of typed-set of papers at page No.5, but, it is not a certified copy of the order. He has also filed another copy of the memo at page No.6 stating that he and his wife-Malini have filed a suit in O.S.No.112 of 2012 and that has been withdrawn as settled out of Court. Further, he has stated that on 08<sup>th</sup> September, 2012 the respondent herein has given an undertaking that he handed over all the cheques and he has not possessed any ICICI Bank cheques bearing Cheque Nos.355229 and LPD 355230. He has also given an undertaking to the effect that he will not give a complaint against the persons of the above stated cheques. The learned counsel further submitted that on 07.11.2012, the respondent has specifically stated that 'no balance amount' and the same has also been signed by Venkatesan and Vijaya. But, in the case on hand, he borrowed money and subsequently for repaying the amount, he issued blank cheque, which was presented for encashment, which shows that those documents filed by the petitioner much before the date of borrowal, because the agreement itself shows that on the date of 08<sup>th</sup> September, 2012, he is not having any cheque of this petitioner and hence, the argument of the petitioner does not merit acceptance.

5. Therefore, the core question is as to whether he borrowed money or not and whether he repaid the same or not and that can be decided only through cross-examination of the witnesses. Therefore, it is a well settled dictum of the Honourable Apex Court, if there is a question of fact to be decided, that shall not be quashed and after considering the oral evidence, the matter will be decided.

6. Considering the same, I am of the view that there is no merit in this petition. Hence, this Criminal Original Petition is dismissed at the stage of admission. However, the petitioner is at liberty to raise all his defence before the trial Court during the trial. Consequently, connected Miscellaneous Petitions are closed.

Ps

Sd/-  
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

- 1.The Judicial Magistrate No.IV,Trichy.
  - 2.The Chief Judicial Magistrate, Trichy.
  - 3.The Additional Public Prosecutor,Madurai Bench of Madras High Court, Madurai.
- 1CC to Mr.K.Sivabalan, Advocate, SR.No.44748.

Cr1.O.P (MD) No.15300 of 2015  
and  
M.P (MD) Nos.1 & 2 of 2015  
07.08.2015

2P/5C

AM/19.08.2015