

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.04.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

Crl.O.P.No.3577 of 2016
and Crl.M.P.Nos.1827 and 1828 of 2016

N.Rajasekaran .. Petitioner/Accused

Vs.

G.Jayaraman ...Respondent/Complainant

Prayer:- Petition has been filed under Section 482 of Cr.P.C. to call for the records relating to the proceedings in S.T.C.No.1463 of 2015 on the file of the District Munsif cum Judicial Magistrate Court, Vedaranyam, Nagapattinam District and quash the same.

For Petitioner : Mr.S.Senthilnathan

O R D E R

The petitioner has come forward with this petition to call for the records relating to the proceedings in S.T.C.No.1463 of 2015 on the file of the District Munsif cum Judicial Magistrate Court, Vedaranyam, Nagapattinam District and quash the same.

2.The respondent as a complainant filed a complaint in S.T.C.No.1463 of 2015 stating that the petitioner herein has borrowed a sum of Rs.2,50,000/- on 10.08.2015 and also undertook to repay the same within a month and issued a cheque dated 24.09.2015. When the same was presented for encashment, it was returned with an endorsement "Payment stopped by Drawer". After issuance of statutory notice, the complaint has been filed.

3.The learned counsel appearing for the petitioner would submit that there is no legally subsisting liability. He would submit that the cheque has not been given by him and it was taken by the respondent/complainant. Hence, he has given a complaint dated 25.09.2015. Hence, he prays for quashing the proceedings in S.T.C.No.1463 of 2015.

4.At the time of admission, argument of the learned counsel for the petitioner is heard in length. Notice to the respondent is dispensed with.

5.Considering the argument advanced by the learned counsel for the petitioner, I am of the view that whether the cheque has been stolen or whether the the cheque has been issued by the petitioner is a question of fact because the signature in the cheque has not been disputed. In such circumstances, it is the duty of the petitioner/accused to prove that the cheque has been stolen. But considering the paragraph Nos.1 and 4 of the affidavit filed by the petitioner it is seen that the cheque was dated 24.09.2015 and the complaint has been given on 25.09.2015, but whereas in the complaint given by the respondent it was specifically mentioned that the petitioner/accused borrowed money from the respondent on 10.08.2015 and on that day itself, he undertook to repay the same within a month and also issued a cheque dated 24.09.2015. So, it is only a question of fact to decide that whether the petitioner has issued a cheque dated 24.09.2015 on 10.08.2015 or whether the cheque has been stolen by the respondent/complainant? But, the petitioner has not filed any documents to show that on the basis of the complaint given by the petitioner on 25.09.2015 a case has been registered. Therefore, I am of the view that it is only a question of fact that can be decided only after letting oral and documentary evidence. Hence, the Criminal Original Petition deserves to be dismissed as devoid of merits.

6.In the result, the Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.
cse

s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To

The District Munsif cum Judicial Magistrate Court,
Vedaranyam, Nagapattinam District.

+ 1 cc to Mr.S.Senthilnathan, Advocate SR 22406

bvr(co)
prk26/4

Cr1.O.P.No.3577 of 2016

and

Cr1.M.P.Nos.1827 and 1828 of 2016