

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2017

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P.No.24027 of 2009 and

M.P.No.1 of 2009

E.Agathiyan

.. Petitioner

vs.

M/s.Kathir Foundation having its
Registered Office at No.BF-4, ALS Garden,
No.8, Natarajan Street,
Dhanalakshmi Colony,
Vadapalani, Chennai - 600 026.

Rep. by its Branch Deputy Manager

T.Sugumar

.. Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in C.C.No.3476 of 2009, on the file of the learned Judicial Magistrate No.I, Mayiladuthurai and quash the same.

For Petitioner : Mr.G.Jermiah

For Respondent : No Appearance

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JUDGMENT

The petitioner herein filed this Criminal Original Petition under Section 482 of Cr.P.C. to quash the proceedings initiated against him by the respondent herein in C.C.No.3476 of 2009 on the file of the learned Judicial Magistrate No.1, Mayiladuthurai.

2.The short facts leading to filing of the above private

complaint reads as follows:

The respondent herein as complainant filed the above private complaint against the petitioner herein to punish him for the offence punishable under Section 138 of Negotiable Instruments Act (herein after referred as "N.I. Act") towards dishonor of cheque issued by the petitioner herein.

3. According to the complainant/respondent herein, the petitioner/accused borrowed loan amount of Rs.50,000/- from the Respondent on 16.12.2006 agreeing to repay the same with interest in 200 installments.

4. The accused have paid 112 installments only and thereafter he has not paid the balance amount. After so many efforts and repeated demand made by the complainant, the accused issued a Cheque bearing No.324521 dated 03.07.2009 for Rs.44,017/- drawn on Indian Bank, Mudilyarpet branch. The complainant has presented the said cheque for collection on 04.07.2009 through their bankers namely ICICI, Mudilyarpet. Whereas the said cheque was returned with an endorsement "Insufficient Funds" vide memo dated 10.07.2009. Thereupon Statutory Notice was issued to the accused on 03.08.2009. The accused had not received the said notice. Hence the above private complaint was filed by the complainant against the petitioner herein in C.C.No.3476 of 2009 before the Learned Judicial Magistrate No.1, Mayiladuthurai.

5. Questioning cognizance of offence under Section 138 of N.I. Act as against the petitioner, he has come up with this present Criminal Original Petition to quash the complaint as an abuse of process of law.

6. I heard Mr.G.Jermiah, learned counsel for the petitioner and there is no representation on behalf of the respondent.

7. The Learned counsel appearing for the petitioner would submit that the above complaint is sheer an abuse of process of law. Even according to the version of the complainant, the petitioner herein had repaid 112 installments, out of 200 installments. The amount borrowed by the petitioner herein was Rs.50,000/-. According to the petitioner's counsel, at the time of borrowal, the respondent herein obtained blank cheque and also obtained signatures in blank papers.

8.The petitioner never issued the subject cheque on 30.07.2009 as alleged in the complaint. The blank cheque obtained by the complainant has been misused with a malafide intention.

9.It is the contention of the petitioner's counsel that the above blank cheque obtained from the petitioner herein in the year 2006 has been misused when there is no debt or liability and there is no cause of action for filing the private complaint under Section 138 of N.I. Act.

10.According to the petitioner's counsel, there is no legally enforceable debt as against the petitioner herein and therefore the above private complaint is liable to be quashed as the same is an abuse of process of law.

11.This Court has carefully considered the submission of the Learned Counsel for the petitioner and also perused the entire records. It is the admitted case of either side that the petitioner herein borrowed loan amount of Rs.50,000/- from the respondent herein on 16.12.2006 and the petitioner herein agreed to pay the said amount with interest in 200 equal installments at Rs.270/- daily for 200 days.

12.From the perusal of the complaint it is stated that the petitioner herein paid 112 installments and therefore he failed to pay the remaining installments. Subsequently after repeated demands the petitioner herein issued the subject cheque. Whereas, the said contention was denied by the petitioner herein stating that at the time of loan given to the petitioner herein, by the respondent herein, a blank cheque was obtained and the same has been misused maliciously.

13.According to petitioner, the respondent herein has not approached the trial court with clean hands. Both parties agreed that 112 installments were paid by the petitioner herein, out of 200 installments which comes to Rs.30,240/-. The total loan amount borrowed by the petitioner herein was Rs.50,000/-. Further the agreed rate of interest has not been mentioned in the complaint.

14.In any event the cheque has been put for collection by filling it to the tune of Rs.44,017/-, in the considered opinion of this court it may not be proper on the part of the complainant, since the petitioner herein had already paid 112 installments. Therefore this court is of the view that the respondent herein has not approached the trial court with clean hands and therefore this court has no hesitation to hold that

the initiation of proceedings under Section 138 of the N.I. Act against the petitioner herein is a clear case of abuse of process of law.

15. Accordingly impugned proceedings in C.C.No.3476 of 2009 on the file of the learned Judicial Magistrate No.1, Mayiladuthurai is hereby quashed. Consequently, connected miscellaneous petition is closed.

Sd/-

Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

The Judicial Magistrate No.I,
Mayiladuthurai.

+1cc to Mr.G.Jermiah, Advocate Sr.No.20810

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CSL/08.11.2018

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