

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2018

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

Cr1.O.P.No30304 of 2015

and

M.P.No.1 of 2015

Kalaiyarasan.S ... Petitioner

Vs.

Divyakumar ... Respondent

PRAYER: Criminal Original a petition filed under Section 482 of Cr.P.C, to call for the records in S.T.C.No.272 of 2015 on the file of the Judicial Magistrate No.III, Salem and quash the same.

For Petitioner : Mr.S.Shanmugam

For Respondent : Mr.R.Jayaprakash

ORDER

The petitioner is the respondent in STC.No.272 of 2015 on the file of the Judicial Magistrate No.III, Salem.

2. The respondent/complainant filed a private complaint under Section 200 of the Criminal Procedure Code, before the Judicial Magistrate No.III, Salem, against the present petitioner for an alleged offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

3. The case of the respondent/complainant is that the petitioner borrowed a sum of Rs.6,00,000/- on 03.05.2013 and issued cheques bearing Nos.071328, 071329, 071330, 071331, 071332, 071333 and 071334 drawn on Punjab and Sind Bank, Salem. When the respondent/complainant presented the said cheques for encashment through his banker's viz., United India Bank, Salem, the same was returned for the reason "insufficient funds. According to the complainant, he issued a notice dated 22.08.2013 and that though the petitioner herein received the said notice did not come forward to make good the payment.

4. In the present petition, the primordial contention of the petitioner is that the respondent invested Rs.6,00,000/- in the proposed Private Limited Company to be incorporated by the petitioner and that though the petitioner was willing to issue shares for the invested money, the respondent refused to accept the same and instead misused the cheques which were given to the respondent at the time of investment made by the respondent as security and filed a private complaint in STC.No.272 of 2015.

5. At the out set, it may be observed that the petitioner has not disputed his signature on the cheques and on the contrary his specific contention is that the cheques were issued towards security for the investment made by the respondent/complainant in his proposed Private Limited Company. On the contrary the contention of the respondent is that the petitioner borrowed a handloan of Rs.6,00,000/-. Whether the amount was given by way of hand loan or the respondent invested money in the Private Limited Company of the petitioner is a disputed question of fact which has to be decided by the trial Court. At this stage, this Court cannot conduct any roving enquiry to find out the truth or otherwise of the allegations made by the petitioner and therefore, I do not find any reason to quash the entire proceedings in STC.No.272 of 2015 on the file of the Judicial Magistrate No.III, Salem.

6. However, the learned Judicial Magistrate No.III, Salem, is directed to dispose of the case in STC.No.272 of 2015 within a period of six months from the date of receipt of a copy of this order.

7. In the result, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

dna

To

The Judicial Magistrate No.III, Salem.

+ 1 cc to Mr. R. Jayaprakash, Advocate Sr.49644

+ 1 cc to MR. P. Puhazh Gandhi, Advocate Sr.49658

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and

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(CS-VI)
EU(21/08/2018)



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