



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.12.2019

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRL OP (MD) . No.22147 of 2015

and

M.P. (MD)Nos.1 and 2 of 2015

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Bhuvaneswari ... Petitioner/Sole Accused
-Vs-

1.The State Rep. By
The Inspector of Police,
Poovanthi Police Station,
Sivagangai District. ...Respondent No.1/Complainant

2.Ponuchamy ... Respondent No.2/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records relating to the petitioner against in the final report in C.C.No.181 of 2015, on the file of the Judicial Magistrate Court No.II, Sivagangai, Sivagangi District in Crime No.117 of 2015, on the file of the Inspector of Police, Poovanthi Police Station, Sivagangai District and quash the same.

For Petitioner : Mr.R.Udhayakumar
For Respondents : Mr.A.Robinson
Govt. Advocate (Crl. Side) for R1
: Mr.V.S.Kumaraguru for R2

O R D E R

The petitioner is figuring as an accused in C.C.No.181 of 2015, on the file of the learned Judicial Magistrate No.II, Sivagangai. The defacto complainant is one Ponuchamy. His case is that the petitioner offered to secure public employment for him and made him part with sum of Rs.1,00,000/-. Since the promised employment did not materialise, the petitioner allegedly returned the amount by issuing a cheque.

2.The second respondent filed a complaint before Poovanthi Police Station and that led to registration of Crime No.117 of 2015. The matter was investigated and final report was filed before the learned Judicial Magistrate No.II, Sivagangai against the petitioner herein. Cognizance of the offence under Section 420 of I.P.C. was taken. To quash the same, this criminal original petition has been filed.

3.Heard the learned counsel on either side.

4.The learned counsel appearing for the petitioner drew my attention to the contents of the FIR. Along with the FIR, photocopy of the cheque issued by the petitioner herein was also enclosed.



The FIR was registered on 03.06.2015.

5.The petitioner's counsel further pointed out that the said cheque was subsequently presented for collection on 29.07.2015. Since it was dishonoured, the defacto complainant in order to take action under Section 138 of Negotiable Instruments Act, issued statutory notice dated 04.08.2015. In the said statutory notice, it has been mentioned that the petitioner herein borrowed a sum of Rs.1,00,000/- on 18.04.2015 and promised to repay the same and that towards discharge of the said liability, the cheque bearing No.098625 drawn on Syndicate Bank, Thiruppuvanam Branch, Sivagangai District was issued. It is not in dispute that that the photocopy of the said cheque was enclosed along with the FIR. The defacto complainant has thus come out with two different versions. In the FIR he would claim that he gave a sum of Rs.1,00,000/- for securing employment and since the same did not materialise, the petitioner to return the same issued the cheque question. But while initiating prosecution under Section 138 of Negotiable Instruments Act, he would take the stand that the petitioner had borrowed the said amount from him. Both cannot obviously go together. Therefore, I hold that the very institution of the impugned prosecution against the petitioner herein is an abuse of legal process. Quashing the same alone would serve ends of justice. In this view of the matter, the impugned prosecution stands quashed and the criminal original petition stands allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CrI.side)

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Sub Assistant Registrar(CS)

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To:

1.The Judicial Magistrate No.II,
Sivagangai.

2.The Inspector of Police,
Poovanthi Police Station,
Sivagangai District.

+1 CC to M/s.M/S.V.S.KUMARAGURU, Advocate (SR-104289[F]
+1 CC to M/s.M/S.R.UDHAYAKUMAR, Advocate (SR-104233[F]

CrI.O.P. (MD)No.22147 of 2015

SMA/04/06/2020/2P/5C