



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.08.2018

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P.(MD)No.10719 of 2016

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M.Mohamed Ismail

... Petitioner / Revision Petitioner /
Petitioner

Vs.

1.Dr.S.Chidambaram

2.Dr.N.S.K.Pillai

3.Tmt.Sumitha Chidambaram ... Respondents / Revision Respondents
/ Accused

PRAYER:- Petition - filed under Section 482 of the Criminal Procedure Code, to set aside the orders passed by the IV Additional Sessions Judge, Tirunelveli, Tirunelveli District in Crl.R.C.No.24 of 2015 dated 24.03.2006 in confirming the order passed by the Judicial Magistrate, Tenkasi, Tirunelveli, Tirunelveli District, in Crl.M.P.No.20265 of 2014 dated 13.08.2015.

For Petitioner : Mr.K.Prabhu

For Respondents : Mr.G.V.Vairamsanthosh

ORDER

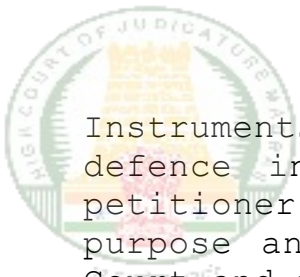
This petition has been filed against the order passed by the IV Additional Sessions Judge, Tirunelveli, Tirunelveli District, in Crl.R.C.No.24 of 2015, dated 24.03.2006, confirming the order passed by the learned Judicial Magistrate, Tenkasi, wherein the learned Judicial Magistrate refused to take cognizance of the complaint.

2. The learned counsel appearing for the petitioner would submit that the Judicial Magistrate has analyzed the entire evidence and has refused to take cognizance of the private complaint. Such an exercise cannot be carried out by the learned Judicial Magistrate even at the time when cognizance is taken.

3. The learned counsel appearing for the petitioner would further submit that at the stage of taking cognizance, the learned Judicial Magistrate has to see whether the complaint, sworn statement and the documents filed along with the complaint make out a prima facie case.

4. The crux of the complaint, which has been given by the petitioner is that his cheques went missing, while he was travelling from Tenkasi to Madurai by Bus.

<https://hcservices.courts.gov.in/hcservices/>
It is seen from the records that the petitioner is facing a trial for an offence under Section 138 of the Negotiable



Instruments Act and therefore, the petitioner wants to create a defence in the said proceedings. It is not necessary for the petitioner to file a separate private complaint for the said purpose and the defence can also be raised before the concerned Court and the same can be established before the said Court.

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5. The entire exercise that was attempted to be made by the petitioner is clearly to keep the 138 proceedings in-abeyance. Whatever the petitioner was attempting to say in the private complaint, can always be taken as a defence in the 138 proceedings pending before the concerned Court and there is no requirement to file a separate private complaint for the said purpose.

6. This Court does not find any illegality or infirmity in the order passed by the learned Judicial Magistrate as well as the order confirmed by the IV Additional Sessions Judge, Tirunelveli, Tirunelveli District. Accordingly, the Criminal Original Petition stands dismissed.

7. The learned counsel appearing for the petitioner brought to the notice of this Court that 138 proceedings is pending in C.C.No.389 of 2014 on the file of the Judicial Magistrate, Sencottai. The learned Judicial Magistrate, Sencottai is directed dispose of C.C.No.389 of 2014 within a period of three months from the date of receipt of a copy of this order.

sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar (CS-II)

To

1. The IV Additional Sessions Judge,
Tirunelveli, Tirunelveli District.

2. The Judicial Magistrate,
Tenkasi, Tirunelveli District.

3. The Judicial Magistrate,
Sencottai.

(To report of complaine of the order dated 31.08.2018
to this registry)

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.G.V.Vairamsanthosh, Advocate SR.No.81721

+1cc to Mr.K.Prabhu, Advocate SR.No.81986

Sm

<https://hccvcs.ecm.court.gov.in/2services/09.2018/2P/7C>

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