

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2019

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.30805 of 2012
and
Crl.M.P.Nos.1 & 2 of 2012

R.Radhakrishnan

... Petitioner/Accused

Versus

M.Sugumar

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records concerned in C.C.No.137 of 2012 on the file of the Judicial Magistrate (FTC), Tiruchengode, Namakkal District and quash the same.

For Petitioner : M/s.C.Prakasam

ORDER

This Criminal Original Petition has been filed to call for the records concerned in C.C.No.137 of 2012 on the file of the Judicial Magistrate (FTC), Tiruchengode, Namakkal District and quash the same.

2.The petitioner is the accused in C.C.No.137 of 2012 on the file of the Judicial Magistrate (FTC), Tiruchengode filed by the respondent for the offence under Section 138 of the Negotiable Instruments Act.

3.The contention of the petitioner is that the petitioner had not availed any loan from the respondent and there is no debt as regards to the respondent. The respondent is working a Manager in Bharathi Finance, in which the petitioner had taken a loan of Rs.1.10 lakhs and during the availment of the loan, he had issued four signed blank cheques to the said Bharathi Finance. The above said loan had been repaid and the petitioner had requested the said Bharathi Finance for the return of the cheques. It was stated that they would return back the cheques after getting the same from their safe custody and also informed that the same was entrusted to their Manager, the respondent

herein, who was working as Manager in the said Bharathi Finance had misused the said cheque.

4.The respondent had stolen the said four signed blank cheques from the said Bharathi Finance and misused the same and filled up and presented the same in his individual accounts and now he lodged the above said complaint for the alleged offence under Section 138 of the Negotiable Instruments Act. The petitioner do not have any nexus with the respondent herein and also there is no transaction happened between the petitioner and the respondent and the petitioner is not liable to pay the same.

5.The learned counsel further submitted that the respondent had not stated, under what circumstances, the petitioner borrowed such a huge amount of Rs.6,00,000/- (Rupees six lakhs only) as hand loan and where he has got the necessary resources for the same.

6.Further contention of the petitioner is that the petitioner is suffering from spinal cord protrusion and his health condition is that he cannot stand or walk for a long and he had been advised physiotherapy and bed rest. Further the petitioner is a resident of Gingee Town, Villupuram District. The respondent had filed a case in S.T.C.No.137 of 2012 pending on the file of the Judicial Magistrate (FTC), Tiruchengode, Namakkal District, which is far off place from Gingee Town, Villupuram District. Due to his health condition, he cannot attend the Court and he will be put to irreparable loss and great hardship.

7.Be that as it may, the petitioner's only contention is that the petitioner finding it difficult to attend the proceedings in S.T.C.No.137 of 2012 pending on the file of the Judicial Magistrate (FTC), Tiruchengode, Namakkal District, which is away from Gingee Town, Villupuram District and he is willing to attend the proceedings in the above said S.T.C.No.137 of 2012, if the case is transferred from Tiruchengode to Villupuram.

8.This Court perused the materials. The contention of the petitioner and the factual matters, which could be gone only during the trial. This Court relied upon the decision of the Hon'ble Apex Court of India in the case of Bhaskar Industries Limited Versus Bhiwani Denim & Apparels Ltd. and others reported in 2001 SCC (Cri) 1254 have held that "in the cases involving offence under Section 138 of the negotiable Instruments Act, if it appears to the Court that personal attendance may result in enormous hardship and cost to an accused, the Court may dispense with his personal attendance either throughout or at any particular stage of the proceedings, after taking an undertaking

from him that he would not dispute his identify as the Court and he would have no objection in taking evidence in his absence. Main concern of the Court is administration of criminal justice and for that purpose the Court proceedings should register progress. However, discretion to dispense with the personal appearance should be exercised in rare cases due to distance or any physical disability or other good reasons, in the interest of justice."

9.Taking into consideration of the petitioner's health condition that he is not able to attend the Court on all hearing dates and in the interest of justice, the petitioner's personal attendance may be dispensed with and the presence of the petitioner may not be insisted, unless and until the Court below feels that his presence is absolutely necessary.

10.With the above observation, this Criminal Original Petition is dismissed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

vv2

To

The Judicial Magistrate (FTC), Tiruchengode,
Namakkal District.

CRL.O.P.No.30805 of 2012

CP (CO)
GN(26/07/2019)

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