

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.No.517 of 2014 and
M.P.No.1 of 2014

A.R.Chandrasekaran

... Petitioner

Vs.

U.Babu

....Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in C.C.No.198 of 2011 on the file of the Judicial Magistrate, Gudiyatham and quash the same.

For Petitioner : Mr.V.Ramamurthy
for Ms.D.Kamatchi

For Respondent : Mr.V.Ayyadurai,
Senior Counsel,
for Mr.V.B.Perumal Raj

ORDER

This petition has been filed to quash the proceedings in C.C.No.198 of 2011 on the file of the learned Judicial Magistrate, Gudiyatham.

2. Mr.V.Ramamurthy, the learned counsel appearing on behalf of Ms.D.Kamatchi, submitted that the petitioner borrowed a sum of Rs.80,000/- from one, Vijayashankar @ Gandhi. While borrowing the amount, the said person deducted Rs.20,000/- towards interest and gave only Rs.60,000/- to the petitioner. While borrowing the amount, the petitioner also handed over unfilled and undated cheque bearing No.036505 and other promissory notes to the said person. Even after repaying the entire loan amount the said person did not return his documents. Therefore, he lodged a complaint before the Superintendent of Police, Vellore and the same was forwarded to the Inspector of Police, Gudiyatham Police Station. Thereafter, he returned all the documents which were received from the petitioner at the time of borrowal of loan. But he did not return the cheque. Thereafter, with a vengeance against the petitioner, he handed

over the cheque to the respondent herein and presented for collection and initiated proceedings for the offence punishable under Section 138 of Negotiable Instruments Act.

3. He further submitted that the respondent is stranger to the petitioner and he had no contact with him. He further submitted that he also obtained information under the Right to Information Act in which the Inspector of Police, Gudiyatham Police Station replied that the said person Vijayashakar @ Gandhi had undertaken that he would not take any action as against the petitioner pursuant to the promissory note and the unfilled cheque. Therefore, there is no legally enforceable debt between the parties and as such he prayed for quashment of the entire proceedings in C.C.No.198 of 2011 on the file of the Judicial Magistrate, Gudiyatham.

4. Per contra, Mr.V.Ayyadurai, Senior Counsel appearing on behalf of Mr.V.B.Perumal Raj, the learned counsel for the respondent submitted that the petitioner issued a cheque for a sum of Rs.4,20,000/- to discharge the personal loan borrowed by him from the respondent herein. The said cheque was presented for collection and returned dishonoured for the reason 'funds insufficient'. Therefore, the respondent caused legal statutory notice. Even after receipt of the same, the petitioner did not reply anything. Therefore, he prayed for dismissal of this quash petition.

5. Heard, Mr.V.Ramamurthy, the learned counsel appearing on behalf of Ms.D.Kamatchi, the learned counsel for the petitioner and Mr.V.Ayyadurai, Senior Counsel appearing on behalf of Mr.V.B.Perumal Raj, the learned counsel for the respondent.

6. On perusal of records, the petitioner lodged a complaint on 30.05.2011 to the Superintendent of Police, Vellore District and the same was forwarded to the Inspector of Police, Gudiyatham Police Station. The Inspector of Police conducted enquiry on the complaint lodged by the petitioner as against one, Vijayashankar @ Gandhi alleging that the petitioner borrowed a sum of Rs.80,000/- in which the said person lent loan only for a sum of Rs.60,000/-. At the time of borrowal of loan, the said person received promissory note, ATM card, Pass book and unfilled cheque from the petitioner. Even after repaying the entire loan amount, the said person failed to return the documents which was received at the time of borrowal of loan. On the enquiry, the said Vijayashankar @ Gandhi returned all the documents except the alleged cheque in the present complaint under challenge in this petition.

7. It is also seen that on the enquiry the said person gave undertaking that he would not take any action on the promissory note and the unfilled cheque. The same cheque was handed over to the respondent herein and it was presented for collection. It is also seen from the complaint that it is completely bereft of facts and nothing stated in the complaint on what way the petitioner is connected and on what way he borrowed any loan amount from the respondent. It is simply averred that to discharge the personal loan borrowed from the complainant, the alleged cheque was issued. As such, there is no liability on the petitioner towards the respondent and the cheque was not issued for any legally enforceable debt. The entire proceeding is nothing but clear abuse of process of law. On the instigation of the said Vijayashankar @ Gandhi, the respondent presented the alleged cheque and initiated the proceedings under Section 138 of Negotiable Instruments Act.

8. In view of the above discussions, this Criminal Original Petition is allowed and the proceedings in in C.C.No.198 of 2011 on the file of the Judicial Magistrate, Gudiyatham is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

The Judicial Magistrate,
Gudiyatham.

+1cc to Mr.V.B.Perumal Raj, Advocate sr.28951
+1cc to M/S.D.Kamachi, Advocate Sr.30412

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M.P.No.1 of 2014

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srg 25/04/2019