

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 28.03.2019

CORAM:
THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.7059 of 2014
and M.P.Nos.1 & 2 of 2014

V.Manikandaraj

... Petitioner

Vs.

Shivakumar

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records in S.T.C.No.145 /2013 pending on the file of the District Munsif cum Judicial Magistrate, Chengam, Thiruvannamalai District and to quash the same.

For Petitioner : Mr.N.Sudharsan

For Respondent : No appearance

O R D E R

The Criminal Original Petition has been filed to quash the proceedings in S.T.C.No.145 of 2013, pending on the file of the learned District Munsif cum Judicial Magistrate, Chengam, Thiruvannamalai District.

2.Heard, Mr.N.Sudharsan, learned counsel appearing for the petitioner and Mr.S.Nagarajan, learned counsel appearing for the respondent.

3.The learned counsel for the petitioner submitted that the complainant filed a private complaint against the petitioner for the offence under Section 138 read with section 142 of the Negotiable Instruments Act, before the learned District Munsif cum Judicial Magistrate Chengam, Thiruvannamalai District and the same was taken on file in S.T.C.No.145 of 2013.

4.The learned counsel for the petitioner further submitted that the petitioner had borrowed a sum of Rs.20,00,000/- from the respondent and had issued a cheque bearing No.830718 dated 20.12.2012 for the aforesaid amount. The complainant presented the said cheque for encashment in his account viz., HDFC Bank, Thiruvannamalai Branch, but the said cheque was returned memo "Insufficient Funds" on 31.01.2013. Thereafter, the petitioner failed to repay the said loan amount. Hence, the complainant

had sent a legal notice dated 23.02.2013, calling upon him to repay the cheque amount and the petitioner had not received the notice and the same was returned with an endorsement "refused". There is no legally enforceable liability and in the said business the cheques were only a theft cheque for the same the petitioner gave a complaint before the Pollachi Town East Police Station and the same was registered in Cr.No.649 of 2010. The dispute arise between the parties using the theft cheque and the provision under Section 138 of the Negotiable Instruments Act will not attract. Hence, the petitioner prayed to quash the proceedings.

5.It is seen that the petitioner borrowed a sum of Rs.20,00,000/- from the respondent dated 20.12.2012 and he had issued a cheque for a sum of Rs.20,00,000/- bearing No.830718 dated 20.12.2012. Thereafter, the complainant presented the said cheque for encashment in his account viz., HDFC Bank, Thiruvannamalai Branch, but the said cheque was returned memo "Insufficient Funds" on 31.01.2013. The averments made in the complaint do not disclose the offence committed by the petitioner.

6.It is also seen that there is no legally enforceable liability and in the said business the cheques were only a theft cheque for the same the petitioner gave a complaint before the Pollachi Town East Police Station and the same was registered in Cr.No.649 of 2010. The dispute arise between the party's using the theft cheque and the provision under section 138 of the Negotiable Instrument Act will not attract. However, in the said complaint it was not mentioned that what purpose the said cheque was given to him, the Cheque No., Date of Presentation, Notice returned date and hence the offence under Section 138 of the Negotiable Instruments Act will not be attracted. The said complaint taken on file is bad in the eye of law. Therefore, the petitioner is not liable to pay any amount to the respondent/complainant.

7.In view of the above, this Court is inclined to allow this Criminal Original Petition and the proceedings in S.T.C.No.145 of 2013, pending on the file of the learned District Munsif cum Judicial Magistrate, Chengam, Thiruvannamalai District is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

The District Munsif cum Judicial Magistrate,
Chengam, Tiruvannamalai District.

CRL.O.P.No.7059 of 2014
and M.P.Nos.1 & 2 of 2014

PPA (CO)

RRS (09/07/2019)



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