

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:20.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.2953 of 2014

and

M.P.No.1 of 2014

K.M.Natarajan

...Petitioner

Vs.

M.Sampath

...Respondent

PRAYER:Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records relating to the case in STC No.142 of 2013 pending on the Judicial Magistrate No.1, Sankari and quash the same by allowing this Criminal Original Petition, as the initiation of proceeding under Section 138 of Negotiable Instruments Act is not in consonance of provisions of the Act, malafide, vexatious and ulterior motive to wrecking vengeance due to private and personal grudge.

For Petitioner : Mr.Viswanathan

For Respondent : Mr.C.Kulanthaivel

ORDER

The Criminal Original Petition has been filed by the petitioner to to call for the records relating to the case in STC No.142 of 2013 pending on the Judicial Magistrate No.1, Sankari and quash the same by allowing this Criminal Original Petition, as the initiation of proceeding under Section 138 of Negotiable Instruments Act is not in consonance of provisions of the Act, malafide, vexatious and ulterior motive to wrecking vengeance due to private and personal grudge.

2.The learned counsel for the petitioner would submit that the petitioner is the accused in the proceedings initiated by the respondent for the offence under Section 138 of Negotiable Instruments Act.

3.The crux of the complaint is that the petitioner borrowed a sum of Rs.2,50,000/- for his business and family needs on 05.10.2012. While borrowing the said amount the petitioner issued a post dated cheque bearing No.200756 dated 05.12.2012

drawn on Tamilnad Mercantile Bank Ltd., Bhavani Branch. When it was presented for collection, the same was returned with an endorsement "Account Closed" on 05.12.2012. Thereafter, the respondent issued a statutory notice and filed a complaint.

4.The learned counsel for the petitioner would further submit that on 19.02.2011 itself the respondent lodged a complaint before the Inspector of Police, Thevur Police Station for the offences of criminal conspiracy and cheating against several persons. The allegation against this petitioner was that he borrowed a sum of Rs.7,00,000/- on the basis of three undated cheques which was drawn on Tamilnad Mercantile Bank Ltd., Bhavani Branch. Thereafter, the said complaint dated 19.02.2011 was withdrawn by the respondent on 26.03.2011 after the enquiry of the police. The learned counsel would further submit that after pursuant to the said complaint, the same cheque was presented by the respondent for an illegal gain and foisted the present complaint. Accordingly, prays for quashing the case in STC No.142 of 2013.

5.Per contra, the learned counsel for the respondent would submit that the petitioner borrowed a sum of Rs.2,50,000/- on 05.10.2012 after issuance of post dated cheque bearing No.200756 dated 05.12.2012. On the instruction of the petitioner, the said cheque was presented for collection and the same was returned with an endorsement "Account Closed". Therefore, the respondent lodged a complaint. The learned counsel would further submit that the earlier complaint was settled before the Police Station on 26.03.2011 itself. After two years, the petitioner again borrowed a sum of Rs.2,50,000/- from the respondent after issuance of post dated cheques. Accordingly, prays for dismissal of this quashment petition.

6.Heard the learned counsel for the petitioner as well as the learned counsel for the respondent.

7.On a perusal of the entire records, it is seen that the petitioner is the accused in STC No.142 of 2013 on the file of the Judicial Magistrate No.1, Sankari. The allegation is that the petitioner borrowed a sum of Rs.2,50,000/- from the respondent on 05.10.2012 and issued a post dated cheque dated 05.10.2012 bearing cheque No.200756. When the same was presented for collection, it was returned with an endorsement "Account closed". It is also seen from the records that the respondent had already lodged a complaint before the Inspector of Police for the offences of criminal conspiracy & cheating against the petitioner and others. The allegation against the petitioner was that he has borrowed a sum of Rs.7,00,000/- on the basis of three undated cheques drawn on Tamilnad Mercantile Bank Ltd., Bhavani Branch. Thereafter on 26.03.2011, before the

same Inspector of Police the respondent withdrew the complaint stating that the matter has been settled between the parties and he would proceed to the Civil Court for the recovery of the said amount.

8. Thereafter, the respondent filed a complaint against the petitioner that the petitioner borrowed a sum of Rs.2,50,000/- on 05.10.2012. It is further noted that the respondent lodged a complaint on 19.02.2011 as against the petitioner and others for non returning of the borrowed amount of Rs.7,00,000/-. Therefore, it is not at all possible for the petitioner to borrow a sum of Rs.2,50,000/- again on 05.10.2012.

9. It is also seen from the cheque leaves drawn from the same Branch of Tamilnad Mercantile Bank pursuant to the account of the petitioner. Therefore, it is nothing but only an abuse of process of law and cannot be sustained. Further, it is seen that the respondent himself acknowledged before the Inspector of Police on 26.03.2011 and undertook to initiate the civil proceedings as against the petitioner and others for recovery of money. It is also seen that there is no civil action taken by the respondent as against the petitioner, which clearly shows that from the same cheque, the respondent has initiated the present proceedings as against the petitioner. Therefore, the complaint has no legs to stand. Hence, this petition deserves to be allowed.

10. Accordingly, this Criminal Original Petition stands allowed. The case in STC.No.142 of 2013 for the offence under Section 138 of Negotiable Instruments Act, pending on the file of the learned Judicial Magistrate No.1, Sankari is hereby quashed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

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To

Sub Assistant Registrar

The Judicial Magistrate No.1, Sankari

+1 cc to Mr.Viswanathan, Advocate, S.R.No.27499

+1 cc to Mr.C.Kulanthaivel , Advocate, S.R.No.26454

Cr1.O.P.No.2953 of 2014 and
M.P.No.1 of 2014

SPD(CO)
SSM(24/04/2019) .