



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 06.03.2019

PRONOUNCED ON : 19.03.2019

CORAM

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

Cr1.O.P.(MD)No.1784 of 2019

1.T.Vijaya
2.P.Lakeeswaran

... Petitioners/1st and 2nd Accused

Vs

Manikandan

... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for records pertaining to complaint filed by the respondent before the learned Fast Track (Magistrate Level) Court, Theni in S.T.C.No.100 of 2018 and quash the same as against these petitioners.

For Petitioners : Mr.B.Rajesh Saravanan

For Respondent : Mr.V.Manikandan

O R D E R

This Criminal Original Petition is filed to quash the complaint filed by the respondent before the Fast Track (Magistrate Level) Court, Theni in S.T.C.No.100 of 2018.

2. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent.

3. The case of the petitioner is: On 03.05.2018, the second petitioner and the respondent have entered into a business agreement. In relation to the said agreement, the first petitioner had given a blank cheque as security mentioning the amount alone. After discharging his obligation the second petitioner demanded the respondent to return the impugned cheque, but Instead of returning it, he had forged the cheque and presented it for collection with the intention to harass the petitioners. The petitioners hence filed a suit in O.S.No.413 of 2018 before the District Munsif Court, Dindigul, for return of the cheque. On the strength of the



dishonoured cheque, on 01.09.2018, the respondent filed a complaint against the petitioners and the same is pending in S.T.C.No.100 of 2018 on the file of the Fast Track (Magistrate Level) Court, Theni.

4.The learned counsel for the petitioners submitted that nowhere in the complaint, it is alleged that the petitioners issued the cheque involved in this case for discharging any outstanding liability. On the contrary, there is a categorical statement, rather an admission, that the cheque has been given only as a security. When the complaint itself discloses a statement that the cheque in question was issued only as security, necessarily no offence is said to have been committed, when the said cheque was dishonored. The learned counsel for the petitioners mainly argued that in the impugned cheque, the second petitioner had not signed and therefore, the complaint under Section 138 of Negotiable Instruments Act is not maintainable. It is his further submission that the first petitioner's signature has been forged and a civil suit filed between the parties is still pending. Therefore, the learned counsel prays for quashing the complaint in S.T.C.No. 100 of 2018 on the file of the Fast Track (Magistrate Level) Court, Theni.

5.The learned counsel for the respondent refuted the submission of the learned counsel for the petitioner and argued that it is not mandatory for the complainant to make a statement that the cheque has been issued for discharging any outstanding liability, since under Section 139 of Negotiable Instruments Act, there is a statutory presumption and that presumption under Section 139 of the Negotiable Instruments Act applies to all cheques of the nature stated in Section 138 of the said Act.

6.1.This Court carefully went through the complaint and considered the submissions made on either side. The respondent/complainant has alleged in the complaint that he shared friendship with the accused/petitioner herein due to which when the accused had required the complainant to advance him some amounts for the former's business purposes amounts were advanced. In paragraph No.4 of the complaint, the complainant made a positive statement that the first accused had issued a cheque dated 03.05.2018 for Rs.1,25,000/- (Rupees one lakh and twenty five thousand only) as security. In paragraph No.5, it is stated that after two months, when the respondent demanded repayment of money, the petitioners had agreed that on repaying the amount, he would take back the cheque in question.

6.2.Therefore, the complaint itself makes evident that the cheque in question was issued only as a security and not for discharging any outstanding liability. In other words, he chose not to trouble the petitioner to rebut the presumption under Sec.139 of the N.I.Act, as the petitioner himself has conceded to the fact that the cheque was not issued for discharging an outstanding liability.



7. In view of the same, this Court finds merit in the case of the petitioners. Accordingly, the proceedings in S.T.C.No.100 of 2018 on the file of the Fast Track (Magistrate Level) Court, Theni, is hereby quashed.

8. In the result, this Criminal Original Petition is allowed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To,

1. The Fast Track (Magistrate Level) Court,
Theni.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.B.RAJESH SARAIVANAN, Advocate in SR-55367

Crl.O.P. (MD)No.1784 of 2019
19.03.2019

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PK/23.04.2019 : 3P/4C