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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED: **18.09.2019**  
CORAM:

**THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN**

**Crl.O.P. (MD)No.2999 of 2018**  
**and**  
**Crl.M.P. (MD)Nos.1367 and 1368 of 2018**

Utchimahali

... Petitioner/Accused No.2

-Vs-

M.Ramesh

... Respondent/Complainant

**Prayer:** Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the entire records pertaining to the case in S.T.C.No.493 of 2017, on the file of the learned Judicial Magistrate No.I, Tirunelveli District and quash the same as against the petitioner.

For Petitioner : Mr.R.Anand

**O R D E R**

This Criminal Original Petition has been filed to quash the proceedings in S.T.C.No.493 of 2017, on the file of the learned Judicial Magistrate No.I, Tirunelveli District.

2. The learned counsel for the petitioner submitted that the petitioner borrowed a sum of Rs.26,00,000/-. When the respondent has asked the said amount, he issued a cheque for a sum of Rs.6,00,000/-. The cheque was presented for collection and the same was returned as 'insufficient fund'. Hence, the complaint.

3. The learned counsel for the petitioner further submitted that the learned Judicial Magistrate, without even conducting an enquiry under the procedure contemplated under Section 202 of Cr.P.C. mechanically has taken cognizance and issued process to the accused. He further submitted that there is absolutely no document proof for the payment of Rs.26,00,000/- by cash by the defacto complainant to the petitioner herein. Therefore he prayed for quashing the entire proceedings.

4. Though notice served on the respondent/complainant and his name is printed in the cause list, no one appeared for the respondent.



5. Heard the learned counsel appearing for the petitioner.

6. The respondent initiated proceedings under Section 138 of the Negotiable Instruments Act, for the offence as against the petitioner herein. According to the respondent, the petitioner already borrowed a sum of Rs.26,00,000/- Thereafter, when the respondent issued a cheque for repayment of the amount, it was presented for collection, got bounced for the reason 'in sufficient fund'.

7. The learned Magistrate after recording the sworn statement has taken cognizance as against the petitioner and issued process. Therefore, all the procedure duly followed by the trial Court. Further, questions of fact and all other points are established only during the trial. This Court find no grounds to quash the proceedings.

8. Hence, this criminal original petition is dismissed with liberty to the petitioner to raise all the grounds before the trial Court. However, the learned Judicial Magistrate No.I, Tirunelveli District, is directed to complete the trial and dispose of the case, within a period of six months from the date of receipt of a copy of this order.

9. At this juncture, the learned Counsel for the petitioner submitted that the presence of the petitioner before the Trial Court may be dispensed with.

10. Accepting the said submission, the personal appearance of the petitioner is dispensed with and he shall be represented by a counsel after filing appropriate application. The petitioner shall be present before the Court at the time of furnishing copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment.

11. Accordingly, the Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (crl.side)

// True Copy //

Sub Assistant Registrar(CS )

To

1. The Judicial Magistrate No.I,

<https://hcservices.tirunelveli.nic.in> District.



2. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

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