



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.11.2019

CORAM:

THE HON'BLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CRL.O.P(MD) No.15978 of 2019

and

Crl.M.P. (MD) Nos.9483 & 9484 of 2019

C.K.N. Nagendran ... Petitioner/Sole Accused

Vs.

C. Selvakumar ... Respondent /Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records in the case in C.C.No.11 of 2019 on the file of the Judicial Magistrate Court No.I Virudhdunagar, Virudhunagar District and quash the same as against the petitioner/Accused as illegal , violation of law.

For Petitioner : Mr.M.Jothi Basu

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.11 of 2019 on the file of the Judicial Magistrate Court No.I, Virudhunagar, Virudhunagar, District.

2.The learned counsel for the petitioner would submit that under Section 202 Cr.P.C., it is the duty of the learned Magistrate to conduct an enquiry before issuing summon to the petitioner/accused, if he resides outside its jurisdiction, in the particular case, the said procedure was not followed. He would further submit that Section 138 N.I.Act proceeding attracts only when the cheque was dishonoured, if on the reason of "funds insufficient", stop "payment", in this case, on 27.07.2018, the cheque was dishonoured as "drawer's signature differs, in complete". Therefore, it is needless to say that the petitioner/accused cannot be prosecuted under Section 138 N.I. Act and the complainant has not produced any document except the cheque to prove the transaction. He would also relied upon the judgment of the Hon'ble Supreme Court in a case of **National Bank of Oman Vs. Barakara Abdul Aziz and another** reported in **2013 (2) SCC 488**. Hence, he prayed for quashment of proceedings in C.C.No.11 of 2019.



3. Heard the learned counsel for the petitioner and perused the material available on record.

4. It is seen that the respondent initiated the proceedings under the Negotiable Instruments Act, alleging that the petitioner has borrowed a sum of Rs.5,00,000/- from the respondent / complainant as a hand loan on agree to repay it within a month. But, he failed to repay the amount and hence, the petitioner issued a cheque on 01.05.2018. Thereafter, the respondent / complainant has represented the cheque for collection in his account and the same has been returned as "funds insufficient" and on 14.06.2018, the respondent / complainant again presented the cheque for collection and it was also returned as "funds insufficient". On the third occasion, on 18.07.2018, the respondent / complainant presented the cheque for collection and the same was also returned as "funds insufficient and Drawer's signature differs, in complete" on 27.07.2018 and thereafter, the respondent/ complainant issued a legal notice to the petitioner on 17.08.2018 and the same has been received by the petitioner on 21.08.2018 and the petitioner sent a reply on 28.08.2018 and thereafter, the respondent / efacto complainant filed a private complaint under Section 200 Cr.P.C., to punish the petitioner under Section 138 of the Negotiable Instruments Act, 1888, before the Judicial Magistrate Court No.I, Virudhdunagar, and the learned Magistrate took the case on file in C.C.No.11 of 2019 and issued summon to the petitioner and thereafter, the petitioner has filed this petition to quash the proceedings in C.C.No.11 of 2019.

5. On perusal of the entire document, the learned Magistrate has rightly taken cognizance and issued summon to the petitioner and all the points raised by the petitioner have to be considered only during the trial. Further, the judgment cited by the petitioner is not at all applicable to the case on hand and the points raised by the petitioner cannot be considered by this Court under Section 482 Cr.P.C. Hence, this Criminal Original Petition is dismissed. However, the Judicial Magistrate Court No.I Virudhunagar, Virudhunagar District, is directed to complete the proceedings in C.C.No.11 of 2019, within a period of one year from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

Ls

<https://hcservices.ecourts.gov.in/hcservices/>



To:

The Judicial Magistrate No.I,
Virudhunagar,
Virudhunagar, District.

+1 CC to M/s.G.M.LAW OFFICE, Advocate (SR-96130[F]dated
05/11/2019)

CRL.O.P(MD) No.15978 of 2019
05.11.2019

VB(25.11.2019) 3P 3C