

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.01.2020

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

Crl.O.P.No.1963 of 2020
and Crl.M.P.Nos.1222 & 1224 of 2020

P.Elango

... petitioner

Vs.

S.Balaji
S.T.C.No.579/2017

.... Respondents

PRAYER : This petition has been filed under Section 482 of the Code of Criminal Procedure, to call for the records in S.T.C.No.579/2017 on the file of the Fast Track Judge (Judicial Magistrate) at Tiruchengode and quash the complaint in the above case as the same is an abuse of process of law.

For Petitioner : Mr.Vignes Ramanathan

ORDER

This Criminal Original Petition has been filed by the petitioner, to call for the records in S.T.C.No.579/2017 on the file of the Fast Track Judge (Judicial Magistrate) at Tiruchengode and quash the complaint in the above case as the same is an abuse of process of the Court.

2. The learned counsel for the petitioner has submitted that based on the complaint filed by the respondent under Section 138 of Negotiable Instrument Act, the learned Fast Track Judge (Judicial Magistrate) at Tiruchengode, has taken the case on the file as S.T.C.No.579/2017 and issued summons to the petitioner. He further submitted that after receipt of the said summons, the petitioner has filed this petition. He further submitted that in the complaint, the respondent has stated that

the petitioner herein, has borrowed a sum of Rs.10,00,000/- as hand loan from him on 26.08.2017 and to discharge the said liability, the petitioner has issued a cheque dated 26.09.2017 for Rs.10,00,000/-. He further submitted that in the complaint, the respondent has not given the details of payment made by him to the petitioner. He further submitted that the petitioner is disputing the signature found in the said cheque and the petitioner is not liable to pay any amount to the respondent and hence, he requests to quash the proceedings against the petitioner in the aforesaid case.

3. A perusal of the complaint filed by the respondent against the petitioner herein shows that on 24.10.2017, the respondent herein has sent a legal notice to the petitioner and the petitioner has received the said notice on 25.10.2017 by signing postal acknowledgment. But, it appears that the petitioner herein has not sent any reply to the said notice. As per Section 139 of the Negotiable Instruments Act, 1881, it shall be presumed, unless the contrary is proved, that the said cheque was issued for discharging the legally enforceable debt. The petitioner has not given any explanation under what circumstances, the said cheque came into the hands of the respondent/complainant. The petitioner has to discharge the said burden. In view of the above, this Court does not find any merits in this petition.

4. For the above said reasons, this petition is dismissed. The learned counsel for the petitioner has requested to dispense with the personal appearance of the petitioner before the Trial Court as the petitioner is aged about 52 years. It is open to the petitioner, to file petitions either under Section 205 or under Section 317 of Cr.P.C. Before the concerned Trial Court to dispense with his personal appearance and it is for the Trial Court to decide the said petitions.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

gbi

To

1.The Fast Track Judge (Judicial Magistrate),
Tiruchengode.

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

+lcc to Mr.Vignesh Ramanathan, Advocate SR.7448

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KK (CO)
CB (28/02/2020)



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