

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2020

CORAM

THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.No.23041 of 2019

and

CrI.M.P.Nos.12036 and 12037 of 2019

J.Benjamin Jacob

... Petitioner/Accused

Vs

K.Venukadevi

.... Respondent/Complainant

PRAYER:

Criminal Original Petitions filed under Section 482 of Cr.P.C, praying, to call for the records in C.C.No.32 of 2006 on the file of the learned Judicial Magistrate No.I, Pollachi and quash the same.

For Petitioner : Mr.A.Saravanan

For Respondent : Mr.D.R.Arun Kumar

ORDER

This Criminal Original Petition has been filed to quash proceedings initiated under Section 138 of the Negotiable Instruments Act, in C.C.No.32 of 2006 on the file of the learned Judicial Magistrate No.1, Pollachi.

2. The learned counsel for the petitioner submitted that the respondent had lodged a complaint for the offence under Section 138 of the Negotiable Instruments Act, as against the petitioner, which, is nothing but an act of fraud activated by malicious motive to gain illegally and to cause wrongful loss to the petitioner. There was no transaction between the petitioner and the respondent in the month of July 2005 and no amount was due nor there was any debt to be discharged for the respondent from the petitioner. In fact, the petitioner had entrusted black cheques to the husband of the respondent when they were doing business in partnership. Thereafter, the petitioner requested for return of the said cheques and the husband of the respondent informed that the said cheques were destroyed by him. Therefore, the entire complaint is clearly an abuse of process of law and prayed to quash the complaint.

3. The learned counsel for the respondent/complainant has submitted that the petitioner had earlier filed a quash petition before this Court in Crl.O.P.No.17892 of 2010 and when this Court did not incline to quash the proceedings, the petitioner has conveniently withdrawn the quash petition and this Court has dismissed the quash petition as withdrawn by an order dated 19.09.2017 and also directed the trial Court to complete the trial within a period of six months from the date of receipt of a copy of this order. Again for the very same ground, the present quash petition has been filed. Therefore, it is nothing but clearly an abuse of process of law and it is liable to be dismissed.

4. Heard Mr.A.Saravanan, learned counsel for the petitioner and Mr.D.R.Arun Kumar, learned counsel for the respondent.

5. The petitioner is a sole accused. The respondent has initiated the proceedings under Section 138 of the Negotiable Instruments Act, alleging that the petitioner had borrowed a sum of Rs.12 Lakhs for his business developments. Towards the repayment of the same, he issued a cheque for the said sum and the same was presented for collection. Thereafter, it was returned dishonoured for the reason account closed. After causing statutory notice to the petitioner, the respondent initiated proceedings under Section 138 of the Negotiable Instruments Act, in the year 2006.

6. In fact in the year 2010, the petitioner approached this Court by way of quash petition in Crl.O.P.No.17892 of 2010 and this Court has dismissed the quash petition by the order dated 19.09.2017, as it has been withdrawn and also directed the trial Court to complete the trial within a period of six months from the date of receipt of a copy of this order.

7. The learned counsel for the petitioner contended that the cheques were given during their business transaction as security, while they were partners and the same have been misused by the respondent. In this regard, the petitioner lodged a complaint and the same has been now charge sheeted. Therefore, the entire proceedings initiated under Section 138 of the Negotiable Instruments Act is nothing but clearly an abuse of process of law.

8. All the points raised by the petitioner are disputed questions of fact, which would not be decided under Section 482 of Cr.P.C. All the points have to be dealt with during trial before the trial Court and as such, this Court has already dismissed the earlier quash petition filed by the petitioner and there is absolutely no reason to entertain the second quash petition, for the same cause of action.

9. In view of the above, this criminal original petition is dismissed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

kv

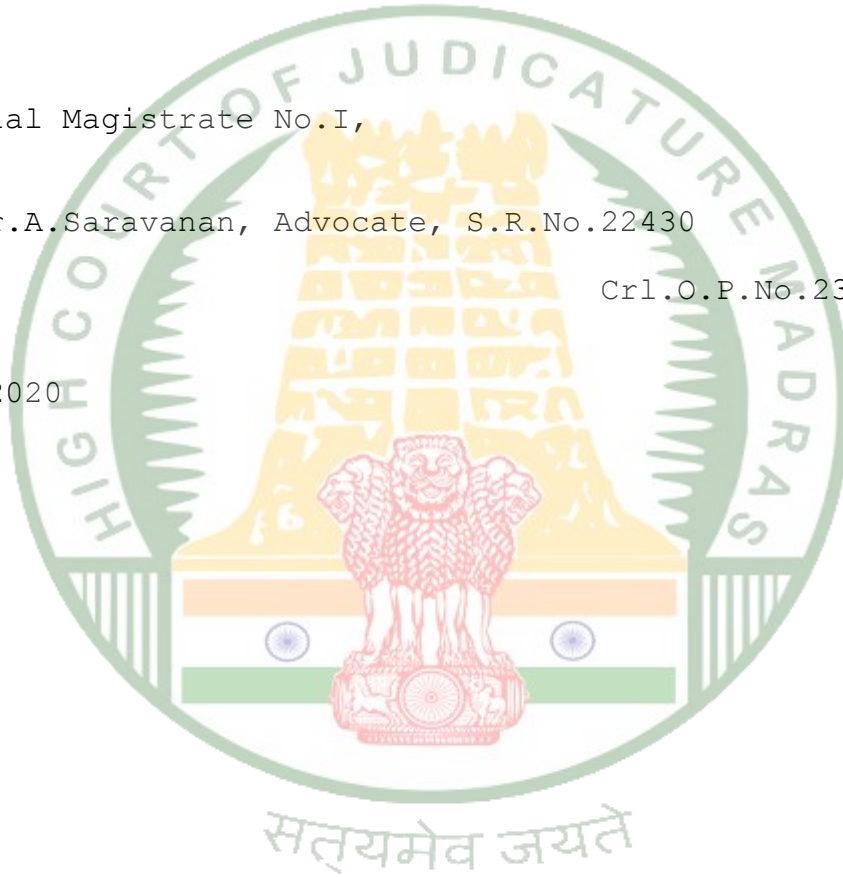
To

The Judicial Magistrate No.I,
Pollachi.

+1cc to Mr.A.Saravanan, Advocate, S.R.No.22430

Crl.O.P.No.23041 of 2019

MR (CO)
CS/17/03/2020



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