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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.11.2021

CORAM

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CRL.O.P.NO.21181 OF 2015

AND

M.P.NOS.1 & 2 OF 2015

Mr. K. Shanmugam

...Petitioner

Vs

Palanivel

...Respondent

Criminal Original Petition filed under Section 482 of Criminal Procedure Code to call for the records pending on the file of the Fast Track Court (Judicial Magistrate Level-1), Attur, in STC No.23 of 2015 and quash the same.

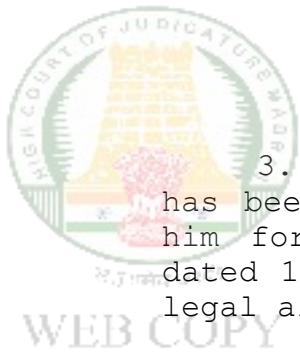
For petitioner ... Mrs.R.Thirumoorthy

For respondent ... Mrs.C.Uma Bhuvaneswari,
Legal Aid Counsel

ORDER

The petitioner, who is the sole accused, in a private complaint filed under Section 138 of Negotiable Instruments Act, in STC No.23 of 2015 on the file of the Fast Track Court, Judicial Magistrate Level-1, Attur, has filed this Criminal Original Petition to quash the same.

2. According to the respondent/complainant, the petitioner/accused borrowed a sum of Rs.4 lakhs on 21.03.2015 and in order to discharge the same, he has issued a cheque dated 21.03.2015. On 26.03.2015, the cheque was presented before the complainant's bank and the same was returned on 30.03.2015 on the ground that "payment stopped by drawer". After issuing a statutory notice, the present complaint has been filed and the learned Judicial Magistrate, Fast Track Court (Magistrate Level), Attur, taken cognizance of the complaint in STC No.23 of 2015 and issued summons. Now, the present petition has been filed to quash the same.



3. Even though notice served on the respondent and his name has been printed in the cause list, none appeared on behalf of him for several hearings and hence, this Court, by an order dated 15.11.2021, appointed Ms.C.Uma Bhuvaneshwari, Advocate, as legal aid counsel for the respondent.

4. The learned counsel for the petitioner would submit that the petitioner never borrowed any amount from the complainant. Earlier, he has obtained vehicle loan from one Thankam Finance, Thalaivasal, in which, the complainant's brother was working as a Cashier. At that time, he has issued blank signed cheques as security. Since there was some dispute between them, on 25.07.2013, the petitioner has given stop payment notice to the Bank, and thereafter, the Finance Company has seized the vehicle and sold it. Now, after lapse of 2 years, the present criminal complaint has been filed through the brother of the cashier, who was working in the Thankam Finance, by the using the cheque given by the petitioner in the year 2012. He further submitted that in the year 2015 itself, the petitioner has given a complaint before superintendent of police, Salem against the complainant and others and the same is pending. According to the petitioner, the stop payment notice has been issued by him in the year 2013 and hence, no offence has been made out under Section 138 of Negotiable Instruments Act.

5. Ms.C. Uma Bhuvaneshwari, legal aid counsel, appearing for the respondent vehemently opposed contending that the present cheque transaction is nothing to do with the earlier borrowal of the petitioner. Absolutely, there is no material available on record to show that the disputed cheque has been given to Thankam Finance in the year 2012. The petitioner/accused has issued the cheque only in order to discharge the hand loan obtained by him in the year 2015. But, after issuance of the cheque, he has deliberately given a stop payment notice with a malafide intention to avoid payment, which clearly attracts the provision of Section 138 of Negotiable Instruments Act. That apart, all the issues raised by the petitioner are the matter for evidence and it would be decided by the Trial Court and those issues cannot be decided in this quash petition. The learned Judicial Magistrate, after considering the entire materials, has taken cognizance and hence, there is no reason to interfere with the same..

6. This Court considered the rival submissions made on either side and perused the materials available on records carefully.

7. The case of the petitioner is that the disputed cheque has been issued in the year 2012 to one Thankam Finance, where



he obtained vehicle loan. The learned counsel also produced the Bank Account Statement of the petitioner, from which, it could be seen that stop payment notice was issued for the disputed cheque on 25.07.2013 itself. Now, according to the complainant, the petitioner obtained loan on 21.03.2015. On that date, the disputed cheque was issued and when the same was presented for collection on 26.03.2015, it was returned on 30.03.2015 on the ground of "Payment stopped by drawer".

8. Considering the fact that the stop payment was issued by the petitioner as early as on 25.07.2013 itself and not after issuance of the cheque on 21.03.2015 as alleged by the complainant, and it probabalize the case of the petitioner/accused. It create serious doubt regarding the borrowal as well as issuance of cheque to the complainant. That apart, it is also stated that the petitioner has given a police complaint on 24.04.2015 alleging that the cheque given to the Finance Company has been misused and it is also stated to have been pending.

9. In view of the above, this Court is of the considered view that there is no offence under Section 138 of Negotiable Instruments Act is made out as against the petitioner and continuing the trial will only abuse of process of the Court, and hence, the it is liable to be quashed.

10. Accordingly, this Criminal Original Petition is allowed and the complaint against the petitioner in STC No.23 of 2015 on the file of the Fast Track Court (Judicial Magistrate Level-1), Attur is quashed. Consequently, connected miscellaneous petitions are closed.

11. While parting with the case, this Court appreciate the services rendered by Ms. C.Uma Bhuvaneswari, learned counsel who appeared on behalf of the respondent, as Legal Aid Counsel. The Legal Services Authority is directed to pay necessary remuneration to her.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mrp



To

1. The Judicial Magistrate,
Fast Track Court (Judicial Magistrate Level-1),
Attur.

2. The Member and Secretary,
Legal Aid Service Authority,
High Court Building,
Chennai - 104.

+lcc to Mrs.C.Uma Bhuvaneswari, Advocate, S.R.No.60212

Crl.O.P.No.21181 of 2015

KG(CO)
RLP(01/12/2021)