

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**Crl.O.P.No.5706 of 2018
and Crl.M.P.No.2873 & 2874/2018**

K.S.Thavaselvean

... Petitioner

Vs.

D.Kathiresan

... Respondent

Prayer: Petition filed under Section 482 of Cr.P.C., to call for the records in summon issued to the petitioner in CMP.No.352 of 2018 on the file of the learned Judicial Magistrate, Thiruvotriyur, Chennai and quash the same.

For Petitioner : Mr.M.Krishnamoorthy

ORDER

The petitioner has filed this petition seeking to call for the records in summon issued to the petitioner in CMP.No.352 of 2018, on the file of the learned Judicial Magistrate, Thiruvotriyur, Chennai and quash the same.

2. Facts leading to the present round of litigation is that the defacto

complainant had approached the petitioner for financial assistance and acquired loan to the tune of Rs.20,00,000/-. However, he could not repay the amount of Rs.13,00,000/- due to loss incurred in his business. Later, the petitioner along with other persons, threatened the respondent to return back their money and charged heavy interest and further repeatedly demanded for repayment of loan. Hence he lodged a complaint before the learned Judicial Magistrate, Thiruvotriyur, to issue summons to the petitioner and others for enquiry under Section 3 and 5(1) of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003.

3. The learned counsel appearing for the petitioner submitted that though the complaint has been filed under Section 3 and 5(1) of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, the summon is issued without application of mind in C.M.P.No.352/2018, as if it is a cheque bounce offence and hence this Court may set aside the summon dated 16.02.2018 and issue a direction to the learned Magistrate to pass orders in terms of Section 202 Cr.P.C before issuing summons.

4. This Court is not inclined to interfere with the issues involving disputed question of facts. However, a perusal of the impugned order reveals that the summon is issued as if it is a cheque bounce offence, where the petitioner is involved in this case for the alleged commission of offence under Section 3 and 5(1) of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, for imposing exorbitant interest.

5. Considering the facts and circumstances of the case, the very issuance of impugned order is without application of mind. Hence on the sole ground, the impugned summon dated 16.02.2018 is liable to be **set aside**.

6. Recording the above reason, the impugned summon dated 16.02.2018, issued by the learned Judicial Magistrate, Thiruvotriyur, is **set aside** and the learned Judicial Magistrate, Thiruvotriyur, is directed to follow the procedure contemplated under Chapter 15 of the Code of Criminal Procedure, to conduct the trial. This Criminal Original Petition is **disposed of**, accordingly. Consequently connected miscellaneous petitions

are closed.

29.06.2021

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

To

1.The Inspector of Police,
District Crime Branch,
Land Grabbing Special Wing,
Vellore, Vellore District.

2.The Public Prosecutor,
High Court of Madras,
Chennai 600 104.



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M.DHANDAPANI,J.
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