

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.7155 of 2021

E.K.Rajan

...Petitioner

Vs.

1.R.Jagadessan

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records or the complaint in S.T.C.No.56 of 2020 on the file of the learned Judicial Magistrate, Thiruvottiyur and quash the same.

For Petitioner : Mr.C.Anbuchezeiyan

O R D E R

This Criminal Original Petition has been filed to call for the records or the complaint in S.T.C.No.56 of 2020 on the file of the learned Judicial Magistrate, Thiruvottiyur and quash the same.

2.The petitioner is an accused in S.T.C.No.56 of 2020 facing trial for offence under Section 138 of the Negotiable Instruments Act.

3.The contention of the learned counsel appearing for the petitioner submitted that the complainant is an Advocate and as per Section 49(1) C of the Advocates Act, the Advocate is barred from having any business transaction or loan transaction with his client. Further he relied upon the Judgment of the Apex Court reported in (2018) 1 SCC 638 in the case of B.Sunitha Vs. State of Telengana. Following the same, this Court also passed an order in Crl.O.P.No.1157 of 2020 dated 29.07.2020 in the case of Illakkia Raja Vs. T.Umamaheswaran, wherein the alleged cheque was issued as security for the loan borrowed by the petitioner. The respondent/complainant as an Advocate had misused the cheque and had filed the case under Section 138 of the Negotiable Instruments Act.

4.He further submitted that the petitioner had already negotiated and settled the issue with the respondent. But the petitioner was unable to mobilize the fund for settling the amount as per compromise. Then the respondent/complainant told the petitioner that he will give the amount as hand loan along with interest. As per the words of the respondent/complainant the loan amount with interest of 2% per month and got blank cheques and pronotes and also got the signature of the petitioner in the blank papers as a security purpose. On 12.03.2019, the respondent/complainant issued lawyer notice. Hence, the petition and the prosecution of the petitioner under Section 138 of the Negotiable Instruments Act is to be quashed.

5.From the perusal of the complaint and the material produced, it is an admitted fact that the petitioner/accused is a long term client of the respondent/complainant. The petitioner is running a school and incurred debt by purchasing some land and in order to meet out the said debt he approached the respondent/complainant and requested him for a hand loan of Rs.6,00,000/-, which was extended by the respondent/complainant. In discharge of the said liability the petitioner had issued a cheque No.000052 dated 05.01.2019 for a sum of Rs.6,00,000/- drawn on UCO Bank, New Washermenpet Branch, Chennai - 81. The respondent/complainant had presented the above cheque and the same was dishonoured and returned for the reason "Drawer's Signature Differs" and the same was intimated to the respondent/complainant by the bank vide bank memo dated 29.01.2020. On the other hand it is clearly admitted by the petitioner is that there is a relationship between the petitioner and the respondent was never sought for a loan and the respondent had extended the loan for the petitioner, thus, it has not in dispute.

6.From the perusal of the citation referred by the petitioner, it is seen that the facts and circumstances of the above said case is completely variance with the facts of this case. The cheques cited supra have been obtained in expectation and for share in percentage of the extended claim, which is not a case here. The relationship between the petitioner and the respondent herein is not the same. The only contention is that the respondent/complainant as an Advocate is barred from having any business transaction or loan transaction with his client. Further, it clearly shows that the petitioner with a clear designed manner had signed the cheque, in such a manner that the cheque being was returned for variance of signature, on the day of dishonour of the cheque, the petitioner had sufficient balance of Rs.6,00,000/- to his credit. For the variance in signature alone the cheque was returned.

7. In view of the same this Court finds that this Criminal Original Petition needs to be dismissed and also directs the trial court to conclude the trial, within a period of three months from the date of receipt of a copy of this order.

8. Accordingly, this Criminal Original Petition stands dismissed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

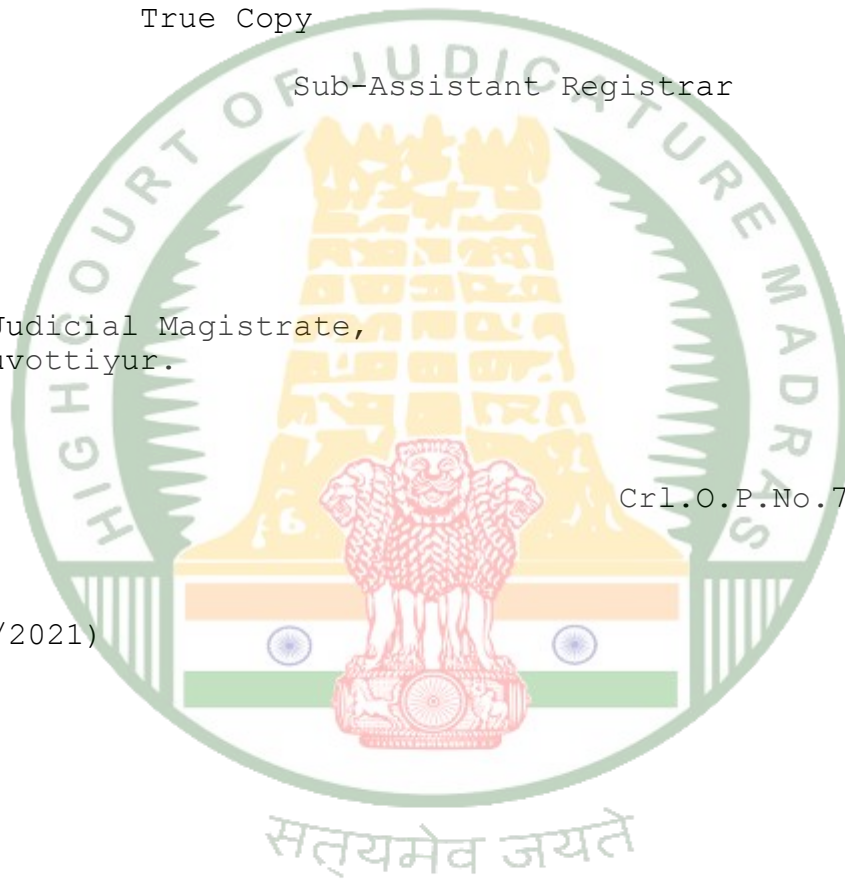
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To

The Judicial Magistrate,
Thiruvottiyur.

Crl.O.P.No.7155 of 2021

RLD (CO)
SP (13/07/2021)



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