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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.NO.25976 OF 2017

AND

CRL.M.P.NO.14981 AND 14982 OF 2017

G.N.Karthikeyan

... Petitioner/Accused

Versus

P.K.Velumani

... Respondent/Defacto
Complainant

PRAYER:-

Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the case in S.T.C.No.124 of 2017, on the file Judicial Magistrate, FTC, Tiruchengode and quash the same.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.N.Chinnaraj

ORDER

This Criminal Original Petition has been filed to quash the complaint initiated for the offence under Section 138 of the Negotiable Instrument Act in S.T.C.No.124 of 2017, on the file Judicial Magistrate, Fast Track Court, Tiruchengode.

2. The case of the respondent/complainant is that, on 23.05.2015, the accused borrowed a sum of Rs.10,00,000/- from the respondent and agreed to repay the same within two months. Towards the said liability, the accused issued a post-dated cheque, dated 23.07.2015, on the same day. When the complainant presented the same before the Bank for encashment after the date of the cheque, it was dishonoured. After complying with the requirements, the complainant has filed the complaint under Section 138 of the Negotiable Instrument Act, against the accused.



3. The main contention of the learned counsel appearing for the petitioner is that the entire complaint is an abuse of process of law and there is no privity of contract between the petitioner and the respondent and the petitioner herein only stood as a guarantor to one K.Mohan. The learned counsel further contended that, in the demand notice sent by the respondent, it is specifically stated by the complainant that the cheque was issued only on 23.07.2015 when the interest amount was demanded by the complainant, whereas in the complaint, it is stated as if the cheque was issued on the date of borrowal of money, i.e., on 23.05.2015. Therefore, the learned counsel submitted that there are contradictions in the statements of the complainant and the complaint itself is motivated and hence, the same is liable to be quashed.

4. Heard the learned counsel on either side and perused the entire materials available on record.

5. Though from the submissions of the learned counsel appearing for the petitioner and on a perusal of the materials, it appears that there are contradictory statements made by the de facto complainant, one in the legal notice and another in the complaint, the veracity of such contradictory statements cannot be gone into by this Court at this stage, while exercising jurisdiction under Section 482 Cr.P.C. At the most, the petitioner can take advantage of the same to disprove the case of the complainant before the trial Court and take such circumstances as a probability in his case to dislodge a legal presumption. However, this Court is not inclined to quash the complaint at this stage.

6. Accordingly, this Criminal Original Petition is closed. Consequently, connected Miscellaneous Petitions are also closed.

7. The trial Court shall decide the matter on its own merits, taking note of the contradictory statements found in the legal notice and the complaint, and dispose of the case in S.T.C.No.124 of 2017, as expeditiously as possible.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

psa/mkn



To

The Judicial Magistrate,
Fast Track Court,
Tiruchengode.

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+1cc to Mr.N.Manokaran, Advocate, S.R.No.62062

CRL.O.P.NO.25976 OF 2017

SR-II (CO)
PBS/14/12/2021