

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL.O.P.NO.24318 OF 2018
AND CRL.M.P.NO.13774 OF 2018

R.Sundararaj

...Petitioner

Versus

R.Satheesh

...Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for records and quash the criminal complaint in C.C.No.3 of 2018 on the file of the Judicial Magistrate II, Villupuram.

For Petitioner : Mr.D.Baskar

For Respondent : Mr.K.Maheshwaran

O R D E R

This petition has been filed to call for the records in C.C.No.3 of 2018 on the file of the Judicial Magistrate II, Villupuram and quash the same.

2. The petitioner has borrowed a loan for his business purpose for Rs.60,000/- from the complainant on 25.08.2016 and promised to repay the amount with 12% interest within two months. Thereafter, on demand, the petitioner gave post dated cheque bearing nos.000114 dated 28.09.2017 of Karur Vysya Bank, at Saligramam Branch, Chennai, in favour of the complainant. When the said cheque was presented in the Bank, it was returned for the reason ''Funds Insufficient''. The complainant also issued a Statutory Notice under Section 138 of the Negotiable Instruments Act, 1881, calling upon the accused to repay the said sum. However, the petitioner has neither repaid the money nor replied the notice, hence, the complainant has lodged a private complaint against the petitioner. Challenging the same, the present petition is filed.

3. The learned counsel appearing for the petitioner submitted that the petitioner has disputed the very fact of obtaining loan from the complainant and further when the

respondent issued notice, the petitioner vide reply dated 06.11.2017, has issued a detailed reply, by claiming that he is not the person who borrowed the amount and not issued cheques which is in question. Further in order to prove his bonafide, the petitioner by letter dated 16.08.2018, has requested the Karur Vysya Bank, Saligramam Branch, to issue a certificate as to whether any person in the name of Sundarraaj.R, has any saving bank account in that branch and the said Bank vide letter dated 17.08.2018, has issued a certificate stating that no savings bank account existed in the aforesaid name. Thus, it is clear that the respondent has filed the complaint with wrong identity of person and further the petitioner had no transaction with the respondent and had not issued any cheques.

4. The learned counsel appearing for the petitioner further drawn the attention of this Court to the complaint filed by the respondent and submitted that though in the operative portion of the complaint, it was mentioned that the petitioner has issued cheque of Karur Vysya Bank, in the list of documents, it shows as if the cheque was of the Tamilnad Mercantile Bank. The contradictory particulars in the complaint itself shows the illmotive of the respondent to defraud the petitioner and grab money from him and prays for allowing of this petition.

5. The learned counsel appearing for the respondent submitted that the petitioner has deliberately issued the cheques by not having sufficient funds in his account and thereby caused financial loss to him. When the respondent issued the Statutory Notice, there was no proper reply from the petitioner. Further the issues involved in the present round of litigation is a triable issue and the grounds raised by the counsel for the petitioners are all factual in nature and it requires appreciation of evidence and this Court cannot decide the same in exercise of its jurisdiction under Section 482 of Criminal Procedure Code. It is left open to the petitioners to raise all the grounds before the Court and the same shall be considered on its own merits and in accordance with law.

6. This Court has carefully considered the rival submissions and also perused the material available on record.

7. As rightly pointed out by the petitioner, though in the complaint, it was mentioned as the cheque was of the Karur Vysya Bank, in the list of document filed by the complainant, it was shown as the cheque was drawn on Tamilnad Mercantile Bank. In view of the contradictory stand taken by the complaint, it appears that the respondent has not approached the Court with clean hands. Hence this Court is inclined to quash the private complaint against the petitioner.

8. For the reasons aforesaid, this Criminal Original Petition is allowed and the complaint in C.C.No.3 of 2018 on the file of the Judicial Magistrate II, Villupuram, is set aside. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate II,
Villupuram.

2.The Public Prosecutor,
Madras High Court.

CRL.O.P.No.24318 OF 2018

RLD(CO)
RVM(22/11/2021)