



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.04.2022

WEB COPY

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.O.P.No.2204 of 2019

and

Crl.M.P.No.1428 of 2019

S.Vignesh

...Petitioner/Accused

Vs.

G.Sridharan

...Respondent/Complainant

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C, praying to call for the records in S.T.C.No.57 of 2018 on the file of learned Judicial Magistrate, Fast Track Court, Tiruvallur and quash the same.

For Petitioner : Mr.V.Subramanian
for M/s.R.Sriram

For Respondent : No appearance

ORDER

This Petition had been filed to call for the records in S.T.C.No.57 of 2018 on the file of learned Judicial Magistrate, Fast Track Court, Tiruvallur and quash the same.

2.Learned Counsel for the Petitioner submitted his arguments. As per his submission, the complaint preferred by the Respondent is not at all maintainable. For the same, he invited the attention of this Court to the averments in paragraphs 10 and 11 of the petition. He further submitted that as per the complaint, the Petitioner and the Respondent were class-mates. While so, the Petitioner wanted to start a business and for which, the Petitioner sought the help of the Respondent/De-facto Complainant. Therefore, the Respondent had contributed a sum of Rs.2,76,000/-. But at that time, there was no agreement or any written document regarding the said transaction. Subsequently, the Respondent/Complainant did not want to proceed with the business. Therefore, he sought money back. At that time, the Petitioner is alleged to have executed



a promissory note and also issued cheques to the Respondent/Complainant. In the complaint and the statutory notice, these facts had been narrated. Therefore, with an ulterior motive the Respondent had obtained acknowledgement of debt which is not a promissory note. Instead of seeking balance amount from the Petitioner, the Respondent had presented the cheque issued by the Petitioner as security. Therefore, the ingredients of Section 138 of the Negotiable Instruments Act are not made out as per the averments in the complaint. Unfortunately, the learned Judicial Magistrate, Tiruvallur, had taken the complaint on file and issued summons to the Petitioner.

3.At the stage of admission, stay was granted. Notice was also sent to the Respondent/De-facto Complainant. Today in the list, the name of the De-facto Complainant is printed but no one appeared for the De-facto Complainant. Hence, the learned Counsel for the Petitioner was heard.

4.In support of his contentions, the learned Counsel for the Petitioner relied on the following rulings of the Kerala High Court and the Hon'ble Supreme Court of India:-

(i) 2002 111 Comp Cas 740 Ker [R.Sreenivasan -vs- State of Kerala and Another]

(ii) M.S.Narayana Menon @ Mani -vs- State of Kerala and Another [Appeal (Crl.) No.1012 of 1999, dated 04.07.2006]

Based on the above said rulings of the Hon'ble Supreme Court and the Kerala High Court, the complaint of this nature is not maintainable. If the cheque issued by the accused was for the security and it had been filled up and presented by the De-facto Complainant the complaint under Section 138 of the Negotiable Instruments Act will not lie. On that ratio, learned Counsel for the Petitioner sought to quash the Criminal complaint.

5.On the basis of the rulings relied on by the Petitioner, the submission of the learned Counsel for the Petitioner is found acceptable and reasonable. Under those circumstances, the averments in the complaint is hit by the above said rulings of the Hon'ble Supreme Court. Therefore, this is a fit case to quash the complaint under Section 482 of Cr.P.C. as per the guidelines issued by the Hon'ble Supreme Court in State of Haryana -vs- Bhajan Lal reported in 1992 SCC (Cri.) 426.



6. In the light of the above discussion, this Criminal Original Petition is allowed. The complaint in S.T.C.No.57 of 2018 is quashed. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Judicial Magistrate,
Fast Track Court,
Tiruvallur.

CrI.O.P.No.2204 of 2019

MT (CO)
SP (13/05/2022)