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Crl.O.P.Nos.12127 ad 12118 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2022

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THE HON'BLE Dr.JUSTICE G.JAYACHANDRAN

Crl.O.P.Nos.12127 ad 12118 of 2019

R.V.Senthil Kumar

... Petitioners /Accused in Crl OP No.12127 of
2019 and 12118 of 2019

-Vs.-

N.R.Bharanitharan

..Respondent/Complainant
in Crl OP No.12127 of 2019 and 12118 of 2019

Prayer in Crl OP No.12127 of 2019:- Criminal Original Petition filed under Section 482 of Code of Criminal Procedure to call for the records of the proceedings pursuant to C.C.No.408 of 2018 before the Judicial Magistrate II Court, Cuddalore and to quash the entire proceedings against the petitioners herein.

Prayer in Crl OP No.12118 of 2019:- Criminal Original Petition filed under Section 482 of Code of Criminal Procedure to call for the records of the proceedings pursuant to C.C.No.407 of 2018 before the Judicial Magistrate II Court, Cuddalore and to quash the entire proceedings against the petitioners herein.



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For Petitioner : Mr.G.Ponmani
in both Crl OPs
For Respondent : Mr.Leelesh Sundaram
in both Crl OPs for M/s.Nathan and Associates

ORDER

These petitions filed to quash the private complaint filed under Section 138 of Negotiable Instruments Act. The case of the complainant/ respondent herein is that during the month of December 2017, the petitioner herein borrowed Rs.4,00,000/- as loan and to discharge the said debt, two cheques each Rs.2,00,000/- dated 25.01.2018 was drawn by the petitioner in favour of the respondent and when those two cheques were presented for collection returned as "payment stopped" by drawer. To the statutory notice, the petitioner accused gave evasive reply and hence, the complaint.

2. The petitioner / accused is before this Court to quash the above complaint on the ground that the respondent / complainant is a 3rd party who interfered in the financial dispute between him and the prospective buyers of the flats which intended to sell. Under the guise of



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settling their dispute, he and his associate started extracting money and also threatened him and his family members with dire consequences. As a result, on 21.01.2018, he gave a complaint to the Thiruppapuliur Police station alleging that the respondent Bharanidharan and his associates came to a shop and threatened him with dire consequences got signature in stamped documents and two cheques for Rs.2,00,000/- each bearing No.000121 and 000122 drawn from the bank of Karur Vysya Bank and sought for action and protection from Bharanidharan and his associates for extracting money. The next day i.e on 22.01.2018, the petitioner has forwarded the same complaint to the DSP, Cuddalore. While so, it is contended that there is no transaction between the petitioner and the respondent and the cheque was snatched away from the petitioner under threat and the same was complained to the police and CSR was also registered on 21.01.2018 and the bank was instructed to stop payment. In spite of that the respondent has filled up the cheque as if it was issued to him on 25.01.2018 and presented. Therefore, prima facie there is no enforceable debt and criminal complaint under Section 138 of Negotiable Instrument Act is not maintainable, so prays for quash.



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3. The learned counsel for respondent complainant would submit that the allegations and averments made in the quash petition are disputed facts which has to be decided by the Trial Court and a petition under Section 482 to quash the said complaint is not maintainable.

4. This Court being abreast of the law and the guidelines of the supreme Court that powers under Section 482 of Cr.PC should be sparingly used only to prevent miscarriage of justice or to meet the ends of justice. In the case the reading of the complaint does not disclose the mode of payment of Rs.4,00,000/- to the petitioner as a loan even the date of loan not mentioned except the vague reference the money was lent during the month of December 2017. While so, within a month the complainant claims that the petitioner has come forward to discharge the debt by issuing the two subject cheques for Rs.2,00,000/- in each and had presented the same. When statutory notice was issued to the petitioner by way of reply as clearly mentioned that the cheque was not issued for discharge of debt but it was extracted from him under force and threat and this was brought to the law enforcing agency on 21.01.2018 itself and CSR petition No.16/2018 dated 21.01.2018 been recorded and a



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subject matter of investigation. In the reply noitce, the petitioner has specifically stated that the complainant has no source of income to lend such a huge amount and bank account had never exceeded balance of Rs.5,00,000/- and he has assigned a reason for instructing his bank to stop payment.

5. In the above facts and circumstances, since the complaint itself is breft of detail about how the debt incurred for enforcement and the same been denied in the reply notice. The complainant without meeting out the denial had been filed with breft of details. This Court taking note of the fact that the allegation that the cheque wasobtained under threat been established by the petitioner accused through police complaint and CSR registered much before the date of the cheque and in the absence of proof of fundamental fact that a sum of Rs.4,00,000/- was lent to the petitioner. It will be a futile exercise to prosecute the petitioner. Hence, invoking Section 482 of Cr.PC, these criminal original



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petitions are allowed and the complaint is quashed. Consequently, the connected miscellaneous petition is closed.

28.09.2022

Speaking/Non-speaking order

Index: Yes/No

Internet : Yes/No

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To

1. The Judicial Magistrate II Court, Cuddalore
2. The Public Prosecutor,
High Court, Madras.



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Dr.G.JAYACHANDRAN.J.,

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