



Crl.O.P.No.19252 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2022

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

Crl.O.P.No.19252 of 2019 and
Crl.M.P.No.9844 of 2019

Shyam Sachdev ... Petitioner

/vs/

Vijay Paruthi ... Respondent

Prayer : Criminal Original Petition has been filed under Section 482 of Cr.P.C. to call for the entire records pertaining to C.C.No.171 of 2015 pending on the file of the Judicial Magistrate Court No.II, Hosur, Krishnagiri District and quash the same as illegal, incompetent by allowing this Petition.

For Petitioner ... Mr.R.Jayaprakash

For Respondent ... No appearance

ORDER

This Criminal Original Petition has been filed to call for the entire records pertaining to C.C.No.171 of 2015 pending on the file of the Judicial Magistrate Court No.II, Hosur, Krishnagiri District and quash the same as



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illegal, incompetent by allowing this Petition.

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2. Heard the learned counsel for the petitioner.

3. The petitioner is the first accused in the private complaint filed by the respondent on the allegation that the petitioner along with the other accused Nos.2 to 4 had made misrepresentation and issued the impugned cheque and cheated the respondent.

4. The learned counsel for the petitioner submitted that the respondent had already filed a complaint against the petitioner for the offence under Section 138 of the Negotiable Instruments Act and that was taken on file in STC No.274 of 2013; during the course of the trial, the respondent filed a petition under Section 257 of Cr.P.C. and prayed to withdraw the complaint with a liberty to file a fresh private complaint under appropriate provisions; the learned Magistrate had permitted the complainant to withdraw the said complaint and refused to give liberty to file a fresh private complaint; however the respondent had once again filed the impugned complaint in violation of the order of the Court and that had been taken on file in



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C.C.No.171 of 2015.

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5. The records would show that prior to filing of this complaint, the respondent had filed a case in STC No.274 of 2013 and initiated criminal action against the petitioner's Company for the offence of dishonour of cheque. During the proceedings of the said case, the respondent had filed a petition under Section 257 of Cr.P.C. to withdraw the complaint with liberty to file a fresh complaint under appropriate provisions. The said petition was only partly allowed with regard to permission to withdraw the case but no permission has been granted for filing a fresh case.

6. The allegations made by the respondent in the present complaint is that only during the course of the trial, from the evidence of the Branch Manager of Vijaya Bank, he came to know that the first accused had given the impugned cheque to the complainant in collusion with A2 to A4, knowing very well that the cheques belonged to the Company of the accused 2 to 4. Since the respondent had given the second complaint for the very same cause of action, the learned counsel for the petitioner submitted that it



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is in violation of the right against double jeopardy and hence the proceedings are liable to be quashed.

7. From the materials it is seen that the respondent has filed the complaint for the offence under Section 138 of Negotiable Instruments Act against the first accused before the learned Judicial Magistrate, Fast Track Court, Hosur. The said fact was stated by the respondent in the present complaint also.

8. The core contention of the respondent in the present complaint is that only during the examination of the Bank Manager he came to know that in the earlier case, the impugned cheque belonged to the Company of the A2 to A4 and on misrepresentation, the cheque was given by the first accused to discharge the dues of the Company of the first accused.

9. On similar facts, the respondent had filed an another case in C.C.No.171 of 2015 against the very same petitioner and other three accused. The petitioner had challenged the same by preferring



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CrI.O.P.No.14082 of 2019 and the same was allowed. In the order passed by this Court in CrI.O.P.No.14082 of 2019 with regard to the another cheque issued by the petitioner to the very same respondent, it is observed that the respondent without opting to amend his private complaint by adding appropriate provisions, had chosen to withdraw the same. Though the respondent sought liberty to file a fresh case, such liberty was not given by the learned Judicial Magistrate, Fast Track Court, Hosur and the said order was not challenged by the respondent herein.

10. It is pertinent to note that the order passed in the petition filed by the respondent under Section 257 of Cr.P.C. in the earlier complaint in STC No. 274 of 2013 was dated 14.08.2014. The respondent had filed the second complaint after a delay of nearly six months before the very same Magistrate to take cognizance for the rest of the offence made out pursuant to the evidence of the Branch Manager, Vijaya Bank. Unlike civil suits, in criminal procedure Code, there is no provision to give liberty to the complainant to withdraw the complaint and file a fresh complaint on the same cause of action.

11. Even if the Special Court for the offence under Negotiable



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Instruments Act does not have the power to conduct the trial with regard to other offences under I.P.C., the respondent could have filed a petition to transfer the proceedings to the appropriate Court, but he had voluntarily filed a petition to withdraw the complaint and brought the proceedings to an end. Since the respondent had filed the second complaint for the same cause of action that had arisen in the earlier complaint, the second complaint is not maintainable.

12. In view of the above stated reasons, I feel it is appropriate for this Court to invoke Section 482 of Cr.P.C., to quash the impugned proceedings.

13. In the result, this Criminal Original Petition is allowed and the proceedings in C.C.No.171 of 2015 pending on the file of the learned Judicial Magistrate Court No.II, Hosur, Krishnagiri District, is quashed. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No
Internet: Yes/No
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To

1.The Judicial Magistrate Court No.II,



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Hosur, Krishnagiri District.

2. The Public Prosecutor,
High Court, Madras.



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R.N.MANJULA ,J.

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