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CRL.O.P.No.23476 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2022

CORAM:

THE HONOURABLE MR JUSTICE V.SIVAGNANAM

CRL.O.P.No.23476 of 2022

C.K.C.Hassan

... Petitioner

Vs.

OTMAL HEERACHAND

S/o.Heerachand Ji,

Proprietor of Shree Mohankheela Investment,

Rep by its Power Agent,

Mr.Hitesh Kumar,

S/o.Otmal Heerachand,

No.11-A.1, Ekambareswarar Agraharam Street,

Park Town,

Chennai – 600 003.

... Respondent

Prayer: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records relating to S.T.C.No.1746 of 2022 on the file of the Metropolitan Magistrate Court, George Town, Chennai and to quash the same.

For Petitioner : Mr.J.Muthukumaran



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ORDER

This Criminal Original Petition has been filed to call for the entire records relating to S.T.C.No.1746 of 2022 on the file of the Metropolitan Magistrate Court, George Town, Chennai and to quash the same.

2. The learned counsel for the petitioner submitted that the respondent/complainant filed a complaint against the petitioner/accused for the offences under Sections 138 & 141 of the Negotiable Instruments Act, 1881 for dishonour of cheque bearing No.320506 for a sum of Rs.9,75,000/- drawn at Indian Bank, Erukkanchery Branch, Chennai and the cheque was returned as "Funds Insufficient". He further submitted that based on the complaint given by the respondent/complainant, the case was taken on file in S.T.C.No.1746 of 2022 on the file of the Metropolitan Magistrate Court, George Town, Chennai.

3. According to the petitioner/accused, the aforesaid cheque was stolen from him and it was misused by the respondent/complainant and the complaint has been filed to extract money from the petitioner/accused. Therefore, he seeks to quash the proceedings in S.T.C.No.1746 of 2022 on



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the file of the Metropolitan Magistrate Court, George Town, Chennai and prays the Criminal Original Petition be allowed.

4. On perusal of records, it is seen that based on the complaint given by the respondent/complainant, a case in S.T.C.No.1746 of 2022 on the file of the Metropolitan Magistrate Court, George Town, Chennai has been registered as against the petitioner/accused for the offences under Section 138 & 141 of the Negotiable Instruments Act, 1881, for dishonour of cheque bearing No.320506 for a sum of Rs.9,75,000/- drawn at Indian Bank, Erukkanchery Branch, Chennai, which was given by the petitioner/accused. When the cheque was presented for collection, the same was returned as "Funds Insufficient" and it became dishonoured.

5. Now, the learned counsel for the petitioner disputed the fact that the petitioner had not given the cheque to the respondent/complainant, it was stolen and misused by the respondent/complainant. Whether the cheque was stolen or not and the cheque has been given by the petitioner/accused or not, are all factual disputes, that has to be adjudicated before the trial Court on letting evidence by the parties. The



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factual dispute cannot be adjudicated and cannot be considered while exercising powers under Section 482 of Cr.P.C for passing any criminal proceedings. Therefore, it does not meet the parameters laid down by the Supreme Court in *State of Haryana Vs. Ch.BhajanLal (AIR 1992 SC 604)*, *M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and others (2021 SCC online 315)* & *PRATIBHA RANI Vs. SURAJ KUMAR & ANR (1985 Cr.L.J.817)*, the matter has to be investigated to find out the truth. Hence, I find no merit in the present Criminal Original Petition.

6. Accordingly, this Criminal Original Petition is dismissed.

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Index : Yes/No

Speaking Order/Non-Speaking Order

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To

1.The Metropolitan Magistrate Court,



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George Town, Chennai.

2.The Public Prosecutor,
High Court of Madras.

V.SIVAGNANAM, J.

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