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CrI.OP.No.22739 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2022

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

CRL.O.P.No.22739 of 2019
and CrI.MP.Nos.11824 & 16155 of 2019

1.A.Veeravel ... Petitioner

Versus

1.The Inspector of Police,
Bhuvanagiri Police Station,
Cuddalore District.
(Crime No.123 of 2019)

2.K.Maruthai ...
Respondents

Prayer:-Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure seeking to call for the records in crime No.123 of 2019 on the file of Inspector of Police, Bhuvanagiri Police Station, Cuddalore, the 1st respondent herein, for an offence under Sections 120 B, 420, 465, 406 of IPC and quash the same as against the petitioner herein.

For Petitioner	:	Mr.C.Prakasam for M/s Kanimozhi Mathi
For R1	:	Mr.A.Gokulakrishnan Additional Public Prosecutor
For R2	:	Mr.R.Sankarasubbu



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ORDER

Earlier order passed in this petition on 03.12.2021 is recalled on 10.12.2021 and on hearing both sides, now order is passed as follows.

2. The petitioner has filed this petition seeking to call for the records in crime No.123 of 2019 on the file of Inspector of Police, Bhuvanagiri Police Station, Cuddalore, the 1st respondent herein, for an offence under Sections 120 B, 420, 465, 406 of IPC and quash the same.

3.The brief facts of the case are as follows:

Based on the complaint lodged by the complainant, the first respondent registered a FIR in Crime No. 123 of 2019 against the petitioner and other accused. As per the FIR allegations, the cheque issued by the second respondent was misused by this petitioner/second respondent. The defacto complainant issued 5 cheques for a sum of Rs.2,94,600/- to one Suresh kumar for payment of procuring paints. Subsequently, he settled the amount by Cash through RTGS from Axis Bank but the said Suresh Kumar failed to return the cheques as he promised. Due to previous enmity, the said cheques were over written by



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the said Suresh kumar for a sum of Rs.32,34,600/-.The said Suresh Kumar conspiring with Veeravel had changed the dates and amount figures to transpire, as if the complainant has to pay a sum of Rs.15,00,000/-, 16,13,000/- & 61,600/- to Veeravel, Raja and Balu respectively. Further, the said cheques were presented and the same were dishonoured and consequently, notices were issued to the complainant for dishonourance of cheques, to which, a reply was made by the defacto complainant. The said Suresh kumar also informed him that those cheque leaves issued to him were lost and a cheque bearing number. 000476 was manipulated by the present petitioner namely V.Veeravel. Based on the said information, the defacto complainant has lodged the complaint against the petitioner.

4.The learned counsel for the petitioner submitted that originally the defacto complainant/second respondent joined as employee in the petitioner's automobile spare parts business. Subsequently, he started construction contract and selling construction materials and the business was shifted to other place and the defacto complainant was taking care of the sale of construction materials. Further, he borrowed money on several



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occasions which comes around fifty lakhs. On 07.04.2016, second respondent entered into construction agreement with the petitioner for constructions work. Pursuant to the completion of the work, the defacto complainant/second respondent issued a part of amount and further, for remaining amount, he issued a cheque for a sum of Rs.15,00,000/-. Be it noted, the defacto complainant made an allegation against the petitioner for taking money from his bank account conspiring with bank officials and the said complaint was also closed after a detailed enquiry. Apprehending prosecution under Sec.138, Negotiable instrument Act, the defacto complainant had lodged this instant complaint as a counter-blast and roped the petitioner with a intention to harass him and he should not approach the Court to recover lawful dues from the defacto complainant. Hence, he prayed to quash the FIR against this petitioner as it is a clear case of abuse of process of law.

5. The learned counsel for the second respondent submitted that the said cheque leaves were given to one Suresh Kumar of OM Sakthi Traders, Bhuvanagiri which was misused by the petitioner and other accused by demanding money from him and also issued notice with an



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intention to initiate proceedings under Section 138 of Negotiable Instrument Act. Thereafter, the defacto complainant came to know about that the said Suresh Kumar conspired with other accused persons fabricated the documents with an intention to grab money from him but he is not liable to pay any amount. Hence, the FIR was lodged. Therefore the petitioner and other accused liable to face the investigation and trial before the Court below. Hence, he prayed for dismiss this petition.

6.On considering the submissions on either side, the facts reveals that there was business transaction between the petitioner and the defacto complainant, with regard to the construction of building, based upon that the petitioner constructed building and there is balance amount of Rs.31,64,122/- and he demanded the same then he issued the notice on 16.09.2019 and the same was enclosed in the typed set of papers. For that notice the defacto complaint replied on 03.07.2018, denied the agreement and also raised allegations against the business officials. He also contended that cheque leaves which were given to one Suresh Kumar were fabricated by this petitioner and his accomplices. The rejoinder was given by this petitioner with the particulars of the amount involved in the



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construction of building transactions and also specifically stated that the cheque dated 19.06.2019 for a sum of Rs.15,00,000/- is loan with him and he was not aware of the said Suresh Kumar.

7. Further more there is no complaint against the said Suresh kumar for mis-placement of the said cheques by this defacto complainant. But the second respondent gave a complaint before the Srimushnam Police station stating that the cheque leaves were missed including the 5 cheques given to the said Suresh Kumar and the police issued CSR 272 of 2019 after receipt of the complaint, this said police enquired with all persons including the bank and found that as per the bank statement all the cheque leaves were used by R2 for his business transaction, but he suppressed that fact hence the said complaint was closed. Therefore, the fact reveals that there was money transaction between the petitioner and the defacto complainant and further, the petitioner issued notice demanding the defacto complainant to repay a sum of Rs.15,00,000/- based upon the cheque issued by the defacto complainant. After issuance of the said notice, the defacto complainant filed this complaint against



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this petitioner before the first respondent. On Seeing the conduct of the defacto complainant, he suppressed pending civil suit in O.S.No. 220 of 2019 as well as the other business transactions with the petitioner from the year of 2016 and there was a exchange of notices between the parties which reveals that there was money dispute pending between them with regard to construction of building and the petitioner had approached the Civil forum by filing civil suit in O.S. No.220 of 2019 which is prior to date of filing of this FIR. But as per the allegations in the FIR, the defacto complainant stated that he issued cheque to one Suresh Kumar and the same was fabricated by the petitioner for unlawful means but before that the petitioner also filed a civil suit for recovery of amount. Therefore, the defacto complainant is entitled raise all his defense before the civil forum, if he proved that the cheque is fabricated by the petitioner for unlawful gain before the court below then he can initiate criminal proceedings, Now, the present complaint is premature in nature and with a view to avoid civil proceeding the 2nd respondent had filed this frivolous complaint against this petitioner, if it is permitted to proceed further, which would cause grave injustice to the petitioner. Therefore, the proceedings against the petitioner is quashed as it is a clear case of abuse



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8. Accordingly this criminal original petition is allowed.

Consequently, Connected Miscellaneous petitions are closed.

.06.2022

Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
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T.V.THAMILSELVI, J.

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To

1. The Inspector of Police,
Bhuvanagiri Police Station,
Cuddalore District.
2. The Public Prosecutor,
High Court, Madras.



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