



Crl.O.P.No.25105 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2022

CORAM:

THE HONOURABLE MR. JUSTICE **V.SIVAGNANAM**

Crl.O.P.No.25105 of 2022

P.Arunprasath

... Petitioner

Vs.

T.Deivakumar

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to set aside the order passed in Crl.M.P.No.6735 of 2019 in C.C.No.371 of 2014 on the file of the Judicial Magistrate No.1, Udumalpet, dated 21.04.2022.

For Petitioner : Mr.B.Gopalakrishnan

ORDER

This Criminal Original Petition has been filed challenging the order dated 21.04.2022, passed in Crl.M.P.No.6735 of 2019 in C.C.No.371 of 2014 by the Judicial Magistrate No.1, Udumalpet,.



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2. The brief facts of the case in C.C.371 of 2014 is that, the petitioner herein had received totally a sum of Rs.23,00,000/- from the respondent on two occasions, i.e. on 16.04.2014 a sum of Rs.10,00,000/- ; and on 26.04.2014, a sum of Rs.13,00,000/- by executing promissory notes. To discharge the said amount, the petitioner had issued a cheque bearing No.007479 for Rs.23,00,000/- drawn on Tamilnadu Merchantile Bank to the petitioner, Subsequently, when the cheque was presented for collection, the same was returned as " funds insufficient" and hence, after issuing statutory notice to the petitioner, the respondent has filed a private complaint against the petitioner for the offence punishable under Section 138 of Negotiable Instruments Act.

3. In that case, the respondent herein was examined as PW1 and he was cross examined by the petitioner herein. Since the PW1 denied certain facts during the cross examination, the petitioner herein filed a petition in Crl.M.P.No.6735 of 2019 before the Trial Court seeking to get the call details of the mobile numbers 996594877, 9047010546, 9047010547, 9047010548 from the Vodofone Office, Pollachi, to prove his defence case. After hearing



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rival submissions of the counsel on either side, the above petition was dismissed by the Trial Court by order dated 21.04.2022, against which this petition has been filed.

4. The learned counsel for the petitioner submitted that, the petitioner, the respondent and one Subramanian were working under one Vaduganathan, who is the proprietor of Harshini Hatcheries, and to improve the business of that Company, the proprietor had arranged CUG mobile numbers to the petitioner, respondent and Subramani, viz., mobile Nos.996594877, 9047010546 were given to the complainant/respondent herein, 9047010547 was given to the petitioner herein and 9047010548 was given to Subramanian. He further submitted that, the petitioner never borrowed any money from the respondent and the respondent herein, who is a binami to the above said Vaduganathan, has filed a false case against the petitioner, using the blank cheque handed over by the petitioner to the said Vaduganathan for a money transaction with him. Hence, if the call details of the above mobile numbers are received from the Vodofone office, Pollachi, the petitioner can prove his defence case.



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5. Heard the learned counsel for the petitioner and I have perused the materials on record.

6. A perusal of the records shows that the petitioner is the accused in C.C.No.371 of 2014 on the file of the Judicial Magistrate-I, Udumalpet and he was charged for the offence under Section 138 of Negotiable Instrument Act, since the cheque, given by him to discharge his liability of Rs.23,00,000/-, was dishonoured. But the contention of the petitioner herein is that, he has not received any money from the respondent and in order to disprove the money transaction with him, the petitioner has filed a petition before the Trial Court seeking to get the call details of the mobile numbers 996594877, 9047010546, 9047010547, 9047010548 from the Vodafone Office, Pollachi and the above petition was dismissed by the Trial Court.

7. At the out set, it is to be noted that the call details of the mobile numbers is not a primary evidence to prove the money transaction, happened on 16.04.2014 and 26.04.2014. It is alleged by the respondent that the petitioner had received a sum of Rs.10,00,000/- on 16.04.2014 and a sum of



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Rs.13,00,000/- on 26.04.2014 by executing promissory notes. Therefore, to disprove the pronote transactions, the call details of the mobile numbers are not necessary and further the call details are irrelevant to decide the issue on the promissory notes. Therefore, the Trial Court has rightly dismissed the petition and this Court do not find any reason to interfere in it. As such, this petition has no merits and it deserves for dismissal.

8. Accordingly, this Criminal Original Petition is dismissed.

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Index: Yes/No
mst

To:

The Judicial Magistrate No.1, Udumalpet,



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V.SIVAGNANAM, J.

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