



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.O.P.No.29452 of 2018

&

Crl.M.P.Nos.17293 & 17295 of 2018

N.Stalin

... Petitioner / Accused No.5

Vs

1. State Rep. by

The Inspector of Police,
Kitchipalayam Police Station,
Salem District.

...1st Respondent / Complainant

2. K.Balamurugan

...2nd Respondent / Defacto
Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records pertaining to the impugned proceedings in C.C.No.142 of 2018 on the file of the Judicial Magistrate II, Salem for the offence under section 420 read with 109 IPC and quash the same.

For Petitioner : Mr.S.Venkatasubramaniyan

For Respondents : R1 - Mr.R.Kishore Kumar,
Government Advocate (Criminal Side)

R2 - No appearance

O R D E R

This petition has been filed to quash final report filed in C.C.No.142 of 2018 on the file of the learned Judicial Magistrate No. II, Salem for the offence under section 420 read with 109 IPC.

2. The charge against the petitioner is that this petitioner filed a case against the defacto complaint at the instance of the other accused and thereby committed the afore said offence. The allegation in the final report indicate as if



the accused 1 to 4 had borrowed a sum of Rs.70 lakhs from the witnesses for the purpose of real estate business and opening a trust and blank negotiable instruments have been obtained from the accused and the accused have failed to pay the amount. Except the above allegations, no other serious allegations have been unearthed by the investigating officer.

3. Admittedly, a complaint under section 138 of the Negotiable Instruments Act has been initiated by the present petitioner/A5 and he has been roped in the criminal case as a defence for the proceedings under section 138 of the Negotiable Instruments Act. The entire allegations clearly indicate that there is a dispute over the payment of amount and the allegation also indicate that the defacto complainant issued cheques. Such being the matter, merely because, the petitioner/A5 has filed a complaint under section 138 of the Negotiable Instruments Act, it cannot be said that he has committed an offence under section 420 read with 109 IPC. Hence, continuing prosecution against the present petitioner is nothing but abuse of process of law.

4. Accordingly, this Criminal Original Petition is allowed and the proceedings in C.C.No.142 of 2018 on the file of the learned Judicial Magistrate No.II, Salem against the present petitioner/A5 is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vrc / kbs

To

1. The Judicial Magistrate No.II,
Salem.
2. The Inspector of Police,
Kitchipalayam Police Station,
Salem District.
3. The Public Prosecutor,
High Court, Madras - 104.

Crl.O.P.No.29452 of 2018

GPL[co]

NSK 16/02/2022