



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.03.2022

CORAM:

THE HON'BLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.(MD)No.3450 of 2022

M.Asir

...Petitioner/Respondent/Accused
Vs.

S.Murugiah

...Respondent/Petitioner/Petitioner

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C., to set aside the order dated 07.09.2021 passed in Cr.M.P.No.4318 of 2019 in C.C.No.90 of 2016 passed by the learned Judicial Magistrate, Shencottah.

For Petitioner : Mr.I.Robert Chandrakumar

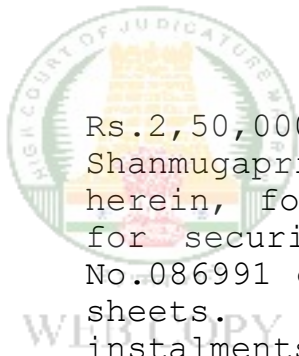
For R1 : Mr.B.Baskar

ORDER

This petition has been filed challenging the order dated 07.09.2021 passed in Crl.M.P.No.4318 of 2019 in C.C.No.90 of 2016, thereby allowing the petition filed under Section 91 r/w 311 of Cr.P.C to examine the Inspector of Police on the side of the complainant and also to produce the document namely, the complaint lodged by the respondent herein against his daughter. The petitioner is the accused and the respondent is the complainant.

2.The case of the petitioner is that the respondent lodged a complaint for the offence punishable under Section 138 NI Act as against the petitioner alleging that the respondent has borrowed a sum of Rs.10,00,000/- from the complainant on 11.11.2020 for his urgent family needs. In order to repay the said amount, he issued a cheque. On instructions, the said cheque was presented for collection and it was returned for the reason 'insufficient funds'. After causing statutory notice as contemplated under Section 138 of NI Act, the petitioner filed a complaint and the same has been taken cognizance in C.C.No.90 of 2016. After examination of DW1, the respondent filed a petition under Section 91 r/w 311 of Cr.P.C to examine the Inspector of Police, Ramanadhapuram Crime Branch Police Station, Coimbatore and also to produce the documents namely, the complaint, dated 07.04.2019 and the same was allowed. Aggrieved by same, the petitioner/accused filed this criminal original Petition.

3.According to the petitioner, he has not borrowed any loan from the respondent and he has not issued any cheque as alleged by the respondent in order to repay the loan amount. The petitioner has been running an institute for Spoken English in the name and style of "Blessing" at Coimbatore. The petitioner borrowed a sum of

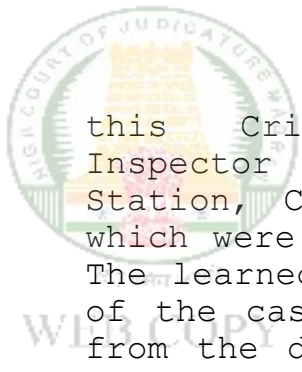


Rs.2,50,000/- for interest at the rate of 5% as loan from one Shanmugapriya who is none other than the daughter of the respondent herein, for his wedding expenses. While borrowing the said loan, for security purpose, the petitioner has issued a blank cheque No.086991 of IDBI Bank, three promissory notes and five blank green sheets. The petitioner repaid the entire loan amount in five instalments. However, he failed to return the said documents which were obtained for security purpose at the time of borrowal of loan. Therefore, the petitioner lodged a complaint on 07.04.2015 as against the daughter of the respondent herein and also against her husband before the Inspector of Police, Ramanathapuram D1 (B7) Police station, Coimbatore. Since no action was taken, the petitioner lodged a complaint before the Commissioner of Police, Coimbatore on 25.04.2015. In the said complaint, the petitioner specifically mentioned about the alleged cheque bearing No.086991 drawn in IDBI Bank. The said complaint was forwarded to the Inspector of Police, Ramanathapuram D1 (B7) Police Station. During enquiry, the daughter of the respondent herein and her husband appeared for enquiry and had given written statement, dated 12.05.2015 that they would work out the issue through Court for the reason that the petitioner did not repay the entire loan amount with interest.

4.In such circumstances, the respondent lodged a complaint for the offence under Section 138 NI Act, as if the petitioner had borrowed loan from the respondent. The respondent misused the cheque which was given to his daughter by the petitioner as early as in the year 2012. To prove the case, the petitioner obtained the complaints and written statements of the respondent's daughter and her husband under the RTI Act and all the documents were marked through DW1 as defence documents. However, when the matter was posted for arguments, the respondent filed the petition to examine the Inspector of Police D1(B7), Ramanathapuram Police Station, Coimbatore and the same was allowed, without considering the fact that already the documents, which are now disputed by the respondent herein, were marked as defence documents. That apart, the respondent failed to call for the subsequent complaint and the statement of his daughter made before the police.

5.This Court is of the view that if the Inspector of Police D1 (B7), Ramanathapuram Police Station, Coimbatore, is examined as witness, it will serve useful purpose to the petitioner also, as the documents which were marked as Exs.D1 to D4 can be endorsed by the inspector of Police, who conducted the enquiry. However, the learned counsel for the petitioner submitted that now the respondent suspected the complaint, dated 07.04.2015 and filed the above petition to drag on the proceedings. Thereafter, again the respondent will file another petition in respect of other documents namely Exs.D2 to D4.

6.In view of the above, this Court finds no infirmity or illegality in the order passed by the Court below. Accordingly,



this Criminal Original Petition is dismissed. However, the Inspector of police D1 (D7), Ramanadhapuram Crime Branch Police Station, Coimbatore, is directed to produce the other documents, which were already marked as Ex.D2 to Ex.D4 before the Trial Court. The learned Judicial Magistrate, Shencottah, is directed to dispose of the case in C.C.No.90 of 2016 within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To:

- 1.The Judicial Magistrate,
Shencottah.
- 2.The Inspector of Police D1(B7),
Crime Branch Police Station,
Coimbatore.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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MGJ(06.05.2022) 3P 4C