



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.[MD].No.5821 of 2020

and

CRL.M.P.[MD]Nos.3171 & 3172 of 2020

Mudasher Basha

... Petitioner / Sole Accused

Vs.

A.Thiyagarajan

... Respondent / complainant

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records in C.C.No.45 of 2019 on the file of the learned Judicial Magistrate / Fast Track Court, Karaikudi, Sivagangai District and quash the proceedings initiated against the petitioner.

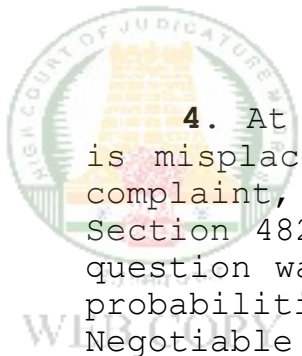
For Petitioner : Mr.K.Veilmuthu
For Respondent : Mr.J.Anandhakumar

ORDER

This Criminal Original Petition is filed to quash the final report filed in C.C.No.45 of 2019 on the file of the learned Judicial Magistrate / Fast Track Court, Karaikudi, Sivagangai District.

2. It is the case of the respondent before the trial Court that the accused issued a cheque for a sum of Rs.8,00,000/- (Rupees Eight Lakhs only) on 12.01.2019 towards the value. When the above cheque was presented for encashment, through his banker, the same was dishonored on the ground of 'payment stop'. After issuing the statutory notice, the proceedings has been initiated which was taken cognizance by the trial Court. As against the same, the present petition has been filed.

3. The learned counsel appearing for the petitioner would submit that the petitioner herein is an employee under the respondent and the cheque has been misplaced and in respect of which, a complaint has already been given before the concerned police station. Therefore, his contention is that there is no legally enforceable of debt and the misplaced cheque has been misused for filing complaint and hence, the offence under Section 138 of Negotiable Instruments Act, 1881 will not be attracted. Hence, he prays for allowing this petition.



4. At the outset this Court is of the view that whether cheque is misplaced or not is a matter of evidence. The mere lodging a complaint, cannot be taken as proof while exercising power under Section 482 of Cr.P.C., to quash the proceedings. As the cheque in question was issued by the petitioner, it is for him, to bring the probabilities to dislodge the legal presumption attached under the Negotiable Instruments Act under Sections 118 and 139 of Negotiable Instruments Act, 1881.

5. Considering the facts and circumstances of the case and also considering the fact that, as the allegations required proof, this Court is not inclined to quash the proceedings.

6. Accordingly, this Criminal Original Petition is dismissed. At this stage, the learned counsel appearing for the petitioner seeks indulgence of this Court to dispense with the personal appearance of the petitioner before the trial Court. Accordingly, the personal appearance of the petitioner is dispensed with before the trial Court except for the hearing dates, receiving the copies, framing the charges, questioning under Section 313 Cr.P.C., and at the time of passing judgment or any other dates that may be fixed by the Trial Court. The trial Court shall expedite the trial and dispose of the case in C.C.No.45 of 2019 within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (A.D.I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

VSM

To

The Judicial Magistrate / Fast Track Court,
Karaikudi,
Sivagangai District.

+1 CC to M/s.J.ANANDKUMAR, Advocate (SR-22294[F] dated 28/04/2022)

+1 CC to M/s.K. VEILMUTHU, Advocate (SR-22470[F] dated 29/04/2022)

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