



CrI.O.P.(MD) No.5901 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.07.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRL.O.P (MD) No.5901 of 2020

and

CrI.M.P(MD) No.3186 of 2020

Muruganantham

... Petitioner/Respondent/Accused

Vs

Gurusamy

... Respondent/Petitioner/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to set aside the order made in Cr.M.P.No.1418 of 2019 in C.C.No. 40 of 2015, by the Fast Track Court (Magisterial Level), Srivilliputhur, dated 14.02.2020.

For Petitioner : Mr.D.Venkatesh

For Respondent : No Appearance

ORDER

This Criminal Original Petition has been filed challenging the impugned order passed in Cr.M.P.No.1418 of 2019 in C.C.No.40 of 2015,



CrI.O.P.(MD) No.5901 of 2020

on the file of the Fast Track Court (Magisterial Level), Srivilliputhur, dated 14.02.2020.

2. The learned counsel for the petitioner submitted that the petitioner is an accused in C.C.No.40 of 2015, on the file of the Fast Track Court (Magisterial Level), Srivilliputhur, dated 14.02.2020. The petitioner has prosecuted by the complainant for having committed the offence under Section 138 of the Negotiable Instrument Act. The case of the complainant is that the petitioner/accused had borrowed a sum of Rs.9,00,000/- (Rupees Nine Lakhs only) from the complainant, on 25.04.2013 for repayment. The accused issued a cheque bearing No.859728, dated 15.06.2015, on his account M/s.Canara Bank, Dhalavaipuram Branch for a sum of Rs.9,00,000/- (Rupees Nine Lakhs only). But the cheque has been returned as unpaid with an endorsement "Payment Stopped by Drawer" as per the bank return memo, dated 27.06.2015. Thereafter, after receiving the notice, he filed the complaint. The petitioner filed a petition in Cr.M.P.No.1418 of 2019, seeking to summon one D.Draviyam, S/o. Dhatchanamoorthy, who attested promissory note and also to summon the Deputy Superintendent of Police, Rajapalayam and the Inspector of Police, Dhalavaipuram in order to



CrI.O.P.(MD) No.5901 of 2020

prove his defence that the alleged promissory note - Ex-P1 was not executed by the petitioner and also to establish that he gave a complaint against the complainant on 13.06.2015, before the Deputy Superintendent of Police, Rajapalayam with regard to misusing the cheque. The trial Judge dismissed the petition on the ground that the petitioner filed a petition belatedly and also P.W.1 during his cross-examination specifically stated that the cheque number was not mentioned in the complaint and also no action has been taken only for dragging the case. This petition has been filed to establish the defence raised by the petitioner/accused before the Court and pleaded to allow the petition.

3. I have considered the matter in the light of the submissions made by the learned counsel for the petitioner.

4. On perusal of the records, it reveals that the petitioner is an accused in C.C.No.40 of 2015, on the file of the Fast Track Court (Magisterial Level), Srivilliputhur. The Complainant/respondent prosecuted the petitioner for having committed the offence under Section 138 of the Negotiable Instruments Act and dishonored the cheque issued by the



CrI.O.P.(MD) No.5901 of 2020

petitioner/accused and after examination of the complainant, the case was posted for defence side evidence.

5. At this stage, the petitioner/accused filed a petition before the Court below seeking to summon one Draviyam, S/o. Dhatchanamorthy, the Deputy Superintendent of Police, Rajapalayam and the Inspector of Police, Dhalavaipuram. The reason for summoning the person as stated by the petitioner in the petition is to prove that the alleged promissory note – Ex-P.1 was executed by the petitioner/accused and further to prove that on 13.06.2015 itself, he gave a complaint against the respondent/complainant before the Deputy Superintendent of Police, Rajapalayam and the Inspector of Police, Dhalavaipuram.

6. The burden of proof is upon the person who relied upon the promissory note and for denial of execution of promissory note, summoning the defence side witnesses to the alleged promissory note, is irrelevant. Therefore, the contention of the petitioner that to prove the execution of promissory note – Ex.P.1., the defence side witnesses have to be summoned, cannot be accepted. In this regard, the argument of the counsel for the



Crl.O.P.(MD) No.5901 of 2020

petitioner is rejected with regard to the summoning the Deputy Superintendent of Police, Rajapalayam and the Inspector of Police, Dhalavaipuram. With regard to giving up the complaint against the respondent, on 13.06.2015, the petitioner filed the receipt given for the complaint. To prove the contention of the defacto complainant, the Deputy Superintendent of Police, Rajapalayam and the Inspector of Police, Dhalavaipuram are not competent. Therefore, just for lodging a complaint against the respondent, the Deputy Superintendent of Police, Rajapalayam and the Inspector of Police, Dhalavaipuram cannot be summoned and the same is unwarranted. Therefore, I find no merit in this petition and there is no infirmity in the order passed by this Court.

8. Accordingly, this Criminal Original Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed.

27.07.2022

Internet:Yes./No

Index:Yes/no

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To

1. Fast Track Court (Magisterial Level),
Srivilliputhur,

5/7



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Crl.O.P.(MD) No.5901 of 2020



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Crl.O.P.(MD) No.5901 of 2020

V.SIVAGNANAM, J.

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ORDER IN
CRL.O.P (MD) No.5901 of 2020

27.07.2022