



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.03.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD)No.7819 of 2021

and

Crl.M.P (MD)Nos.3998 & 3999 of 2021

WEB COPY

Senthilnadhan

... Petitioner/Accused

Vs.

B.Saravanan

... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to C.C.No.12 of 2021 on the file of the Judicial Magistrate Court No.I, Kulithalai, Karur District and quash the same.

For Petitioner	: Mr.R.Murugappan
For Respondent	: Ms.R.Yamuna

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.12 of 2021 on the file of the Judicial Magistrate Court No.1, Kulithalai, Karur District.

2.The respondent lodged a private complaint alleging that he was a tenant of the petitioner's three shops bearing Door No.2/167-D, situated in Survey S.F.No.26-A, Karur Main Road, Thimmachipuram Village, K.Pettai Panchayat, Kulithalai Taluk, Karur District. Accordingly, both of them have entered into a rental agreement dated 06.12.2019 and tenancy period is upto 05.12.2022 ie., 36 months and the rent payable by the respondent is Rs.37,000/- and advance amount is Rs.8,00,000/-. Thereafter, the petitioner approached the respondent for lease in respect of the above said premises for further amount of Rs.6,00,000/- and the respondent paid the said amount to the petitioner. However, the petitioner failed to execute any lease deed in respect of the subject premises. The entire amount has been paid through bank account. After making the entire payment, the respondent was allowed to run a hotel business in the style of Madras cafe. Thereafter, the respondent could not able to run the business due to Covid-19 pandemic situation and he also insisted the petitioner to execute the lease deed in favour of the respondent. However, the petitioner threatened the respondent to vacate the shop premises. While being so, on 08.06.2020, the respondent was compelled to execute cancellation of the rental agreement and recorded as if Rs.2,70,000/- was repaid and only a sum of Rs.5,30,000/- as balance and undertake to return the said amount on or before 30.11.2020. Thereafter, the petitioner cheated the



respondent without paying single paise even as per the cancellation of rental agreement dated 08.06.2020. Further, alleged that the petitioner break open the shop and rented out to third parties.

3.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

4.On a perusal of the records revealed that the respondent lodged the above complaint seeking direction under Section 156(3) of Cr.P.C. However, the learned Magistrate, without even recording any bank statement and perusal of supporting evidence, straightaway taken cognizance in C.C.No.12 of 2021 for the offences under Sections 406, 420, 494, 441 and 506(i) of I.P.C and issued summons.

5.The learned counsel appearing for the petitioner pointed out that only after examination of the complainant and supporting evidence and after furnishing the list of prosecution witnesses, summons have to be issued as contemplated under Section 204(2) of Cr.P.C.

6.Though the entire allegations are money transaction between the petitioner and the respondent, the respondent was compelled to execute the cancellation of the rental agreement and thereafter, the petitioner failed to return the advance amount and also vacated the respondent illegally by breaking open the shop and rented out to third parties, however, the learned Magistrate did not follow the procedure under Sections 201 to 204 of Cr.P.C and had taken cognizance on the complaint straightaway without even examining the respondent and the supporting witnesses. Only on this sole ground, the impugned cognizance taken on the private complaint lodged by the respondent on issuance of summons is set aside. Accordingly, this Criminal Original Petition is allowed. The matter is remanded back to the learned Judicial Magistrate No.I, Kulithalai, Karur District for fresh enquiry. It is made clear that the learned Magistrate is directed to conduct detailed enquiry and after furnishing the list of witnesses by the respondent, issue summons to the petitioner, if any cognizable offence is made out. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

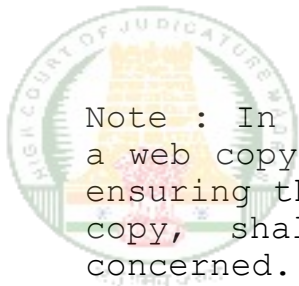
Assistant Registrar (CS-I)

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/ /2022

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

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To
The Judicial Magistrate Court No.I,
Kulithalai,
Karur District.

+1 CC to M/s.R.MURUGAPPAN, Advocate (SR-14822[F] dated 28/03/2022)

Order made in
CrI.O.P (MD) No.7819 of 2021
25.03.2022

RS (04.04.2022) 3P-3C