



Crl.O.P.(MD) No.15154 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.08.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRL.O.P (MD) No.15154 of 2022

and

Crl.M.P(MD) Nos. 9932 & 9933 of 2022

C.Murugan

... Petitioner/ Sole Accused

Vs

A.Muthupandi @ Prabhu

... Respondent/ Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records pertaining to the case in S.T.C.No.394 of 2017 on the file of the learned Judicial Magistrate, Cheranmahadevi, Tirunelveli District and quash the same.

For Petitioner : Mr.Sathya Chidambaram

ORDER

This Criminal Original Petition has been filed to quash the case in S.T.C.No.394 of 2017, on the file of the learned Judicial Magistrate, Cheranmahadevi, Tirunelveli District.



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2. The case of the prosecution is as follows:

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The complainant/respondent herein has filed a complaint before the learned Judicial Magistrate, Cheranmahadevi, Tirunelveli District, alleging that the complainant and the petitioner are belonging to the DMK party and thus, both got acquaintance with each other. While so, on 02.10.2016 the petitioner alleged to have borrowed a sum of Rs.3.00 lakhs for his urgent needs from the respondent and in evidence of the said transaction, the petitioner alleged to have given a cheque bearing No.485052, drawn on Pandiyan Grama Bank, Idayankulam Branch, dated 17.11.2016. It is further alleged that the petitioner assured the complainant he can produce the said cheque even before 17.11.2016 for encashment but the complainant failed to present the said cheque for encashment on 17.11.2016 itself due to his mother illness and after a period of six months, the complainant presented the said cheque for enhancement with Indian Bank, Cheranmahadevi, on 31.01.2017 and the same was returned with remarks “Insufficient Funds” on 02.02.2017 and hence, the complainant personally requested the petitioner to pay the amount covered under the dishonoured cheque, and at that time, the petitioner, alleged to have requested the complainant to represent the said cheque and hence, for second time, the complainant presented the said cheque on 14.02.2017 and the same has been returned with the remarks “refer to drawyer” on 10.03.2017 and thereafter on 24.03.2017 the complainant



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alleged to have issued the legal notice. Even though the petitioner recieved the said notice on 25.03.2017 no reply was given to the said notice, hence he was constrained to file the above complaint under Section 138 of Negotialbe Instruments Act against the petitioner before the learned Judicial Magistrate, Cheranmahadevi.

3. The learned counsel for the petitioner submitted that the petitioner borrowed a sum of Rs.3,00,000/- (Rupees Three Lakhs only) from the respondent and also issued the disputed cheque bearing No.485052, drawn on Pandiyan Grama Bank, Idayankulam Branch, dated 17.11.2016. The complainant filed the case, based on the alleged cheque dated 17.11.2016, which was returned on 02.02.2017 with remarks “Insufficient Funds” and hence the complainant requested the petitioner to pay the amount covered under the dishonoured cheque. Thereafter, the complainant presented the said cheque on 14.02.2017 and the same has been returned on 10.03,2017 with remarks “refer to drawyer”. After receiving the notice he has filed the complaint.

4. I have considered the submission of the learned counsel for the petitioner.



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5. On perusal of the records, it is seen that the respondent filed a private complaint against the petitioner for the offence under Section 138 of Negotiable Instruments Act. The case was taken on file in S.T.C.No.394 of 2017, pending on the file of the learned Judicial Magistrate, Cheranmahadevi, Tirunelveli District. According to the complainant, the petitioner received a sum of Rs.3,00,000/- (Rupees Three Lakhs only) on 02.10.2016 from the respondent. In order to repay the amount, the petitioner gave a cheque No.485052, drawn on Pandiyan Grama Bank, Idayankulam Branch, dated 17.11.2016 which was returned with remarks first time “Insufficient Funds” on 02.02.2017 and hence the complainant requested the petitioner to pay the amount covered under the dishonoured cheque and hence for second time the complainant presented the said cheque on 14.02.2017 and the same has been returned with remarks “refer to drawyer” on 10.03.2017. Hence, the respondent has issued notice and filed the private complaint. Now, the petitioner raised factual defence that he had not received any amount from the respondent and the disputed cheque is belongs to the Panchayatdars and not to the petitioner. So the disputed cheque has to be adjudicated before the trial court by letting evidence. This dispute cannot be adjudicated under Section 482 of Cr.P.C for quashing the criminal proceedings and it is not proper to quash the criminal proceedings before the commencement of trail. Therefore, I find no merit in this petition.



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6. However, the learned Counsel appearing for the petitioner submitted that the personal appearance of the petitioner before the trial Court may be dispensed with and also to give a direction to dispose of the case as expeditiously.

7. I have considered the submission of the learned counsel for the petitioner. The personal appearance of the petitioner before the trial Court is hereby dispensed with subject to the condition that the petitioner shall appear before the trial Court, whenever he requires for further proceedings.

8. Accordingly this Criminal Original Petition is dismissed with a direction to the learned Judicial Magistrate, Cheranmahadevi Tirunelveli to dispose of the case in S.T.C.No.394 of 2017 as early. Consequently, the connected miscellaneous petitions are closed.

24.08.2022

Internet: Yes./No
Index: Yes/no
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To
The Judicial Magistrate, Cheranmahadevi.
Tirunelveli District.



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V.SIVAGNANAM, J.

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