



Crl.OP.No.1379 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2023

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.1379 of 2023

and

Crl.M.P.No.1120 of 2023

L.R.Veerappan

...Petitioner

Vs.

R.Srinivasan

...Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, praying to call for the records in S.T.C.No.149 of 2016 pending on the file of Judicial Magistrate No.II, Salem, Salem District, quash the complaint.

For Petitioner : Mr.R.Balakrishnan

ORDER

This Criminal Original Petition has been filed to call for the records in S.T.C.No.149 of 2016 pending on the file of Judicial Magistrate No.II, Salem, Salem District, quash the complaint.



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2. Learned counsel for the petitioner submitted that petitioner has no connection with, whatsoever with the respondent. He has not borrowed any money from the respondent. Infact the petitioner had lost the impugned cheque, in the year 2008 itself. In this regard, he had given a complaint to Sangagiri Police Station and a receipt in C.S.R.No.427 of 2008 was issued to him on 18.10.2008. Petitioner's one of the friends namely Sakthivel had taken the impugned cheque and filed this case through the respondent. He further submitted that, a legal notice was not served on the petitioner. Without serving legal notice, this case was filed. Therefore, he prays for quashment of S.T.C.No.149 of 2016 pending on the file of Judicial Magistrate No.II, Salem, Salem District.

3. Considered the submissions and perused the records.

4. The case in S.T.C.No.149 of 2016 is filed for the offences under Sections 138 and 148 of Negotiable Instruments Act. It is alleged in the complaint that, petitioner borrowed a sum of Rs.1,00,000/- from the respondent



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for his urgent business purpose, on 11.01.2010. On the same day, petitioner handed over post-dated cheque for Rs.1,00,000/- dated 11.10.2010 of ICICI Bank, Vanavasi Branch. The respondent presented the cheque for collection on 13.10.2010, through his banker Indian Overseas Bank, Sooramangalam Branch, Salem – 5. However, the cheque was returned on 14.10.2010, with the reason that “Payment Stopped by drawer”. The respondent sent a statutory legal notice on 09.11.2010, but the petitioner refused to receive that notice on 15.11.2010. Thereafter, a complaint was given in that regard.

5. Learned counsel for the petitioner mainly challenged the complaint on two grounds,

(i) The cheque, which was lost by him while travelling in a bus, is misused.

(ii) There is no proper service of notice.

We have seen from the complaint allegations that statutory legal notice sent by the petitioner was said to have been refused by the petitioner. The claim of the learned counsel for the petitioner that the cheque, which was lost in 2008



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is being misused by the respondent is a matter required to be decided, only on the basis of oral and documentary evidence produced in this case. This Court cannot go into these disputed facts. Similarly, issue of refusal of notice is also required to be considered on the basis of evidence in this case. Therefore, this Court finds that, there is no merits in the petition for quashment.

6. Accordingly, this Criminal Original Petition is dismissed, with a direction to the trial Court to dispose the case, on the basis of the evidence produced, without being influenced by any of the observations made by the Court in this Order. Consequently, the connected Miscellaneous Petition is closed.

27.01.2023

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Index: Yes/No

Speaking Order: Yes/No



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G.CHANDRASEKHARAN.J.,

gd

To

The Judicial Magistrate No.II, Salem,
Salem District.

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