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Crl.OP No.1706 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-11-2023

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THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Crl. OP No.1706 of 2023

And

Crl.MP Nos.956 and 959 of 2023

B.Chittibabu

... Petitioner/Single Accused

Vs.

S.Balasundaram

... Respondent/Complainant

Prayer: Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure, calling for the records relating to the Criminal Case in CC No.1053 of 2021 on the file of the learned Chief Metropolitan Magistrate Court, Egmore, Chennai and to quash the same.

For Petitioner

: Mr.N.Manokaran

For Respondent

: Mr.P.Vasanth



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ORDER

Heard the learned counsel appearing on behalf of the petitioner.

2. The present Criminal Original Petition has been filed to quash the private complaint initiated under Section 138 of the Negotiable Instruments Act, 1881.

3. The contention of the petitioner is that the complaint is not maintainable, since the cheque issued for earlier loan transaction to construct house has been misused by the complainant, there is no breach of contract between the petitioner and the complainant.

4. Whereas the case of the complainant is that the petitioner entered into an Agreement to sell his house, which was already been encumbered by mortgage in the Bank. The complainant paid the loan amount, got the documents released and expecting the petitioner to execute the Sale Deed. In the meanwhile, the petitioner was hospitalised and he was demanding more money. Therefore, the complainant insisted for return of money advanced. In the course of the said process, the subject cheque for



Rs.45 lakhs was given on 19.03.2020 and the same was presented for collection. The said cheque got returned with an endorsement 'Insufficient Funds' and hence the complaint.

5. However, the learned counsel appearing on behalf of the petitioner would submit that the Statement of Account maintained in the Bank would clearly show that the subject cheque was in use during the year 2017 and even according to the complainant, there is no written Agreement for sale of property or payment of advance of Rs.45 lakhs. While-so, the prosecution for an offence under Section 138 of Negotiable Instruments Act, 1881, has to be quashed.

6. Perusal of documents and on hearing the submissions of the learned counsel appearing on either side, this Court finds that the cheque from the Bank Account maintained by the petitioner herein has been issued for Rs.45 lakhs in favour of the complainant and the said cheque got bounced for want of funds.

7. The complainant states that the liability to pay the cheque



amount arose due to Sale Agreement of an immovable property and the entire original Title Deed of property was given to the complainant at the time of receiving advance. The Title Deed, which was mortgaged in the Bank, was released from and out of the funds given by the complainant as advance to the property.

8. However, it appears that the petitioner herein by lodging a complaint that his document got lost, had obtained Non Traceable Certificate from the police and sold away the property to the third party. The petitioner claims that if there was any Agreement, the complainant ought to have proceeded with specific performance suit. This arguments does not carry any water. Since the accused have already sold the property in the year 2018 itself without the original Title Deed by getting Non Traceable Certificate, there is no answer to the question as to how the original Title Deed of property went to the hands of the complainant.

9. All the points, which is contended before this Court, are all disputed facts, which need to be proved in the manner known to law. Exercising Section 482 Cr.P.C., this Court cannot entertain disputed facts



and give summary judgment. Hence, the present Criminal Original Petition stands dismissed. Consequently, the connected Criminal Miscellaneous Petitions are also dismissed.

20-11-2023

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
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To

- 1.The Chief Metropolitan Magistrate Court,
Egmore,
Chennai.
- 2.The Public Prosecutor,
High Court of Madras,
Chennai.

DR.G.JAYACHANDRAN, J.



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