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Crl.O.P.No.6368 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.6368 of 2021
and Crl.M.P.Nos.4244 & 4245 of 2021 & 3304 of 2022

Karuppasamy

...Petitioner

Vs.

Ganesan

... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the connected records made in C.C.No.6 of 2021 on the file of the Fast Tract Court, Judicial Magistrate Level-1, Attur, Salem District and quash the same as illegal to secure ends of justice.

For Petitioner : Mr.R.Sankarasubbu

For Respondent : Mr.M.Ramadoss

ORDER

This petition has been filed to quash the proceedings in C.C.No.6 of 2021 on the file of the Fast Tract Court, Judicial Magistrate Level-1, Attur, Salem District, thereby taken cognizance for the offences under Section 138 of the Negotiable Instruments Act (hereinafter called as “the NI Act”), as against the petitioner.



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2. The respondent lodged complaint as against the petitioner for the offence punishable under Section 138 of NI Act. The crux of the complaint is that the petitioner borrowed a sum of Rs.3,00,000/- from the respondent on 01.07.2020 and in order to discharge the said liability the petitioner had issued a post dated cheque dated 23.09.2020 for the said amount. The said cheque was presented for collection and the same was returned dishonour for the reason that the payment stopped by the drawer. After causing statutory notice, the respondent filed the present complaint.

3. The learned counsel appearing for the petitioner submitted that the petitioner never issued any cheque directly to the respondent as alleged in the complaint since, he is a stranger to him. The said cheque was not issued for any legally enforceable debt. In fact, on receipt of the statutory notice, the petitioner had sent detailed reply notice in which he categorically stated that the cheque was not issued for any legally enforceable debt. That apart, already the petitioner lodged complaint in Kadamalaikundu police station in respect of theft of some cheques, on 13.09.2020. On receipt of the same, he was issued C.S.R.No.303 of 2019. However, the alleged cheque was presented only on 23.09.2020.



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Therefore, previous to the presentation of the cheque, the petitioner lodged complaint. That apart once again, the petitioner lodged complaint on 06.11.2020 before the same police station and he was issued with C.S.R.No.292 of 2020.

4. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

5. On perusal of the certified copy of the cheque dated 23.09.2020 revealed that the name of the respondent and the signature of the petitioner were written in English and the amount was written in Tamil. Further, the signature found in the cheque completely different from the signature available in the complaint lodged by the petitioner before the Kadamalaikundu police station. In fact, the respondent also produced a settlement entered between one Murugan and the respondent herein in which, the respondent's signature found in the police complaint matches with the signature in the settlement. Whereas, the signature of the respondent in the alleged cheque was in English.



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6. On perusal of the complaint also revealed that the respondent simply averred that the petitioner borrowed a sum of Rs.3,00,000/- that too without any security. Therefore, in the reply notice as well as in the police complaint, the petitioner rebutted the presumption. However, the respondent failed to make prima facie case to prove that the cheque was issued for legally enforceable debt. Hence, the entire proceedings are nothing but clear abuse of process of law and it is liable to be quashed.

7. Accordingly, the proceeding in C.C.No.6 of 2021 on the file of the Fast Tract Court, Judicial Magistrate Level-1, Attur, Salem District, is hereby quashed and the Criminal Original Petition stands allowed. Consequently, connected miscellaneous petitions are closed.

03.11.2023

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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To

1. The Judicial Magistrate Level-1,
Fast Tract Court,
Attur, Salem District.



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G.K.ILANTHIRAIYAN. J.

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