



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 13.07.2023

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

Crl.O.P.No.5705 of 2021

&

Crl.M.P.Nos.3672 & 3673 of 2021

Kathirvel

.. Petitioner

Vs.

Sivaji

.. Respondent

PRAYER : Criminal Original Petition filed u/s.482 of Cr.P.C., seeking to call for the records in C.C.No309 of 2013 on the file of the Judicial Magistrate, Gingee and to quash the same.

For petitioner : Mr. S. Kaithamalai Kumaran

For Respondent : Notice served, no appearance

ORDER

This Criminal Original Petition is filed to call for the records in C.C.No309 of 2013 on the file of the Judicial Magistrate, Gingee and to quash the same.



2. Though notice served on the respondent and his name being printed in the cause list, there is no representation for the respondent either in person or through counsel, when the matter is called.

3. The learned counsel for the petitioner submitted that the petitioner is facing trial in C.C.No.309 of 2013 on the file of the Judicial Magistrate, Gingee. He submitted that the respondent/complainant filed a complaint against the petitioner stating that the cheque issued by the petitioner for a sum of Rs.4,50,000/- was returned with an endorsement 'funds insufficient', when it was presented before his Banker for collection, thus he committed an offence under section 138 of Negotiable Instruments Act. In the said complaint, the respondent had not stated how the petitioner is liable to pay the cheque amount of Rs.4,50,000/-. It is the further submission of the petitioner that the alleged cheque was not given by the petitioner and he sent a reply notice denying the receipt of cheque and also requested the complainant to send the xerox copy of the cheque alleged to have been given by the petitioner to the respondent, but the complainant failed to do so. Since the petitioner had not issued any cheque to the petitioner towards discharging any legally enforceable debt and in the absence of any averment in the complaint that with regard to liability of the petitioner to pay any amount to the complainant, the complaint



filed under section 138 of Negotiable Instruments Act is not maintainable.

Thus he seeks to quash the complaint.

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4. Heard the submissions of the learned counsel appearing for the petitioner and perused the materials available on record.

5. On perusal of the complaint, it is noticed that the complainant had not stated anything about the liability of the petitioner for issuance of cheque. Further, there is no averment with regard to payment of alleged cheque amount of Rs.4,50,000/- by the complainant to the petitioner/accused. Apart from this, on perusal of reply notice issued by the petitioner, it is noticed that the petitioner denied clearly the issuance of any cheque to the complainant and also demanded to produce the xerox copy of the cheque to verify the genuineness of the same. The respondent/complainant has not complied with the request of the petitioner. In the above circumstances, in the absence of any averment regarding the payment of money by the complainant to the petitioner and also in the absence of any averment with regard to liability of the petitioner for issuance of cheque amount towards discharging any legally enforceable debt to the complainant, this court is of the view that the complaint given under section 138 of Negotiable Instruments Act is unsustainable and



the same is liable to be quashed. Accordingly, the criminal proceedings in C.C.No.309 of 2013 on the file of Judicial Magistrate, Gingee is hereby quashed. The Criminal Original Petition is allowed. Consequently, the criminal miscellaneous petitions are closed.

13.07.2023

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V. SIVAGNANAM, J.

msr

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