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CRL.O.P.No. 6259 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2023

CORAM:

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

Crl.O.P.No. 6259 of 2021
and Crl.M.P.Nos.4132 & 4133 of 2021

S.Selvavinayagam

... Petitioner

Vs.

L.Babu

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for records relating to S.T.C.No.115 of 2022 pending on the file of the learned Judicial Magistrate (FTC), Vellore and quash the same.

** Amended as per order dated 05.09.2-23 in Crl.M.P.No.14116 of 2023 in Crl.O.P.No.6259 of 2021*

For Petitioner : Mr.M.Deivanandam

For Respondent : Mr.C. Prabakaran

ORDER

This petition has been filed to call for records relating to S.T.C.No.115 of 2022 pending on the file of the learned Judicial Magistrate (FTC), Vellore and quash the same.



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2. Petitioner is an accused in a complaint lodged by the respondent for the offence under Sections 138 and 142 of NIE Act. Respondent alleged that petitioner is a friend of him and has borrowed a sum of Rs.2,90,000/- by way of hand loan on 10.08.2020 and in order to return the said amount, he had issued cheque for a sum of Rs.2,90,000/- dated 27.11.2020 bearing Cheque No.015181. When it was presented for collection before the Indian Bank, Bazaar Brach, Vellore, it was returned dishonoured stating “Funds Insufficient”. Immediately, respondent issued a legal notice to the petitioner and lodged a complaint for the offence under Sections 138 and 142 of the Negotiable Instruments Act.

3. The learned counsel for the petitioner raised following two grounds to quash the entire proceedings.

(i) The statutory notice dated 14.12.2020 was defective one.

(ii) Respondent played fraud upon the Court by filing complaint annexing defective notice.

4. On perusal of the statutory notice issued by the respondent as contemplated under Section 138 of Negotiable Instruments Act, it is stated in the preamble portion that, petitioner issued cheque bearing No. 015181 dated



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27.11.2020 for a sum of Rs.2,90,000/- . However, in the last portion of the statutory notice, it is stated that, petitioner was called upon to pay the cheque amount of Rs.7,50,000/- to the respondent within a period of 15 days from the date of receipt of the legal mandatory notice. Whereas, while filing the complaint under Section 138 and 142 of Negotiable Instruments Act, respondent annexed notice dated 14.12.2020 as Document No.3. It revealed that, petitioner had issued cheque bearing No.015181 dated 27.11.2020 for a sum of Rs.2,90,000/- and in the last paragraph, petitioner was called upon to pay a sum of Rs.2,90,000/- to the respondent within a period of 15 days from the date of receipt of the notice.

5. The learned counsel for the respondent submitted that, by mistake wrong notice was sent to the petitioner. Only after filing the petition to quash the criminal complaint, respondent came to knowledge that defective notice was sent to the petitioner. If the respondent came to the know about the defective notice, definitely, he would have issued corrigendum to the legal notice dated 14.12.2020.



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6. Therefore, admittedly, defective notice was sent to the petitioner.

Though the cheque was issued only for a sum of Rs.2,90,000/-, as per the notice, petitioner was called upon to pay a sum of Rs.7,50,000/-. Thereafter, on the receipt of legal notice, petitioner did not send any reply, since it is defective one. Now, knowingly or unknowingly, respondent annexed corrected notice before this Court. Though, it would not amount to fraud, since the respondent had no knowledge about the defective notice sent to the petitioner, admittedly, petitioner was served with the defective notice. Therefore, respondent failed to comply with the mandatory provisions as contemplated under Section 138(B) of Negotiable Instruments Act. Thus, this Court is of the view that, complaint lodged by the respondent cannot be sustained as against the petitioner and it is liable to be quashed.

7. Accordingly, this Criminal Original Petition stands allowed and the proceedings in S.T.C.No.115 of 2022 pending on the file of the learned Judicial Magistrate (FTC), Vellore is hereby quashed as against the petitioner herein. Consequently, connected miscellaneous petition is closed.

04.10.2023

Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order
Sma



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To

1. Judicial Magistrate (STC), Vellore
2. Inspector of Police,
Singanallur Police Station,
Coimbatore City.
3. The Public Prosecutor
Madras High Court.



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