



WEB COPY



Crl OP No. 8039 / 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition No. 8039 of 2021

and

Crl.M.P. No. 5277 of 2021

G. Thangavel

... Petitioner

Versus

M. Senthilkumar

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records relating to the impugned complaint vide S.T.C. No. 13 of 2015 on the file of the Judicial Magistrate No.II, Gobichettipalayam and quash the same.

For Petitioner : Mr. A. Sivaji.

For Respondent : Mr. A. Manikandan.

ORDER

The petition is to quash the complaint in S.T.C. No. 13 of 2015 on the file of the Judicial Magistrate No.II, Gobichettipalayam filed for the offence under Sections 138 and 142 of the Negotiable Instruments Act.



Crl OP No. 8039 / 2021

2.It is alleged in the complaint that towards discharge of liability, the petitioner issued a cheque and when the cheque was presented for collection, it was returned for the reason 'Funds Insufficient' and inspite of statutory notice, the petitioner did not make the payment.

3.The learned counsel for the petitioner submitted that the petitioner has nothing to do with the partnership firm called 'Kumaravel Timber Depo'. The cheque has been issued by 'Kumaravel Tiles Mart'. In any case, the learned counsel for the petitioner submitted that the respondent had admitted in his cross examination that the cheque was issued by the partnership firm and since the respondent has not prosecuted the partnership firm, the petitioner alone cannot be made liable in view of the settled position of law.

4.The learned counsel for the respondent, however, submitted that the trial has commenced and it is for the petitioner to establish his defence before the trial Court.



Crl OP No. 8039 / 2021

5.This Court is of the view that the question as to whether the cheque was issued from the account of the partnership firm is a question of fact which has to be determined only by the trial Court. It is no doubt true that if the cheque has been issued from the account of the partnership firm, the prosecution would not lie against the partner without arraying the partnership firm as accused. However it has to be established first that the cheque was issued from the account of the partnership firm. This Court cannot decide that question on seeing the cheque alone. Hence, this Court is not inclined to entertain this petition.

6.However, it is open for the petitioner to raise all the points before the trial Court. Since the petitioner is 60 years old, the personal appearance of the petitioner before the trial Court is dispensed with unless the learned Magistrate considers his presence necessary for the progress of the trial. Since the case is of the year 2015, the learned Magistrate shall expedite the trial and in any event, complete it within a period of six months from the date of receipt of a copy of this order.



Crl OP No. 8039 / 2021

WEB COPY 7. With the above observations, this Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petitions are closed.

21.06.2023

ay

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

The Judicial Magistrate No.II,
Gobichettipalayam.



WEB COPY



Crl OP No. 8039 / 2021

SUNDER MOHAN, J

ay

Crl.O.P. No.8909 of 2021
and
Crl.M.P. Nos. 5793 & 5794 of 2021



WEB COPY



Crl OP No. 8039 / 2021

Dated: 21.06.2023