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Crl.O.P.No.14470 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2023

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THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P. No.14470 of 2021

&

Crl. M.P.Nos.7880 & 7881 of 2021

N.Balakrishnan

... Petitioner

Vs.

R.Marimuthu

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records in C.C.No.18 of 2021 on the file of the Fast Track Judicial Magistrate No.I, at Coimbatore, quash the proceedings therein.

For Petitioner : Mr. C.S.Dhanasekaran

For Respondent : Mr. T.Naveen Chandar



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ORDER

The petition is filed to quash the private complaint filed for the alleged offences under Section 138 of the Negotiable Instruments Act.

2. It is alleged in the complaint that towards discharge of his liability, the petitioner had issued 14 cheques in favour of the respondent, each for a sum of Rs.5,00,000/- totaling Rs.70,00,000/- and when presented for collection, it was returned with the endorsement “*payment stopped by drawer*” and inspite of statutory notice, the petitioner did not make payment. Hence, the impugned complaint.

3. The learned counsel for the petitioner would submit that even according to the complaint, the alleged transaction took place in the year 2016 and the petitioner had issued the cheques in the month of January 2019. However, the dates were filled by the complainant thereafter and the cheque were presented in the month of June 2020.



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4. The learned counsel relied upon the Judgement reported in **2007-1-LW (Crl.) 527 – Ramakannan Vs. Chettiar and Co.**, in support of his submission that when an undated cheque given for security is misused, criminal liability under Section 138 does not arise. The learned counsel further submitted that the alleged amount due has been calculated by charging interest at the rate of 18% p.a, which is prohibited and hence there is no liability to pay the cheque amount to the respondent.

5. The learned counsel for the respondent per contra submitted that the question as to whether there is liability or not has to be adjudicated only before the Trial Court. There is a presumption under Section 139 of the Act that the cheques were issued towards discharge of liability. It is for the petitioner to discharge the said presumption before the Trial Court and hence prayed for the dismissal of the quash petition.

6. This Court is of the view that all the points raised by the petitioner such as that the subject cheques were misused and dates were filled up subsequently and that there was no legally enforceable debt or liability in



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view of charging exorbitant interest, can be adjudicated only by the Trial Court. In view of the above, this Court is not inclined to entertain this petition. However, the petitioner is at liberty to raise all his points before the Trial Court.

7. Hence, the above petition is dismissed. Consequently, the connected miscellaneous petitions are closed. No costs.

8. However, the appearance of the petitioner before the Trial Court is dispensed with unless the learned Magistrate deems it necessary for the progress of the Trial.

26.06.2023

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Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No



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The Fast Track Judicial Magistrate No.I,
Coimbatore.



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SUNDER MOHAN. J,

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