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Crl.O.P.No.20559 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2023

CORAM:

THE HON'BLE MR.JUSTICE **SUNDER MOHAN**

Crl.O.P.No.20559 of 2019 and
Crl.M.P.Nos.10594 & 10595 of 2019

R.Ganesh Prabhu
S/o.Raj Kumar

... Petitioner

Vs.

S.Chandrasekar
S/o.Sundarasamy

... Respondent

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in C.C.No.5 of 2019 on the file of the learned Judicial Magistrate Fast Track-I, Coimbatore and quash the same.

For Petitioner : Mr.M.Murali

For Respondent : Mr.Saravana Sowmiyan

ORDER

This petition is filed to quash the complaint under Section 138 of the Negotiable Instruments Act 1881.

2. It is alleged in the complaint that the petitioner borrowed a sum of Rs.30,000/- from the complainant on 10.05.2018 and to discharge the said



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loan, he has issued a cheque on 14.05.2018. The said cheque was presented on 06.07.2018 and the same was returned for the reason 'insufficient funds'.

Though statutory notice was sent to the petitioner, the petitioner did not make any payment.

3. Learned counsel for the petitioner would submit that the cheque was issued in the name of M/s.Siva Industries by its proprietor. The petitioner has nothing to do with the said proprietary concern and he has also produced the registration certificate of the said concern which shows that the proprietor, is one Mr.P.Rajkumar, who is the father of the petitioner. He has also sent a reply to the statutory notice stating that he has not issued the subject cheque and he has no account in the Syndicate Bank.

4. Learned counsel for the complainant would submit that the defence taken by the petitioner is a question of fact and has to be decided only before the trial Court. The petitioner has to establish in trial that he is not the proprietor of M/s.Siva Industries and he has nothing to do with the said offence. In any case since he had issued a cheque signed by somebody for the loan taken by him, it would amount to cheating.



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WEB COPY 5. On perusal of the documents filed by the petitioner, statutory notice, reply notice and the registration certificate of M/s.Siva Industries, this Court finds that the proprietor of the said concern is one P.Raj Kumar. The reply of the petitioner to the notice sent by the respondent also states that the petitioner has nothing to do with the said concern. This reply notice is part of the documents filed along with the complaint. On the basis of the available materials, the complaint cannot be maintained against the petitioner. However, if it is the case of the complainant that a third party has issued the cheque for the loan taken by the petitioner, it is open to him to pursue other remedies available to him in law.

6. With the above observations, this Criminal Original Petition is allowed and the impugned complaint is quashed as against the petitioner. Consequently, connected miscellaneous petitions are closed.

15.03.2023

Index: Yes/No
Speaking / Non Speaking Order

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SUNDER MOHAN, J

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To
The Judicial Magistrate Fast Track-I,
Coimbatore.

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