



Crl OP No. 22727 / 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition No. 22727 of 2019
and

Crl.M.P. Nos. 11818 & 11819 of 2019

Sivagnanam

... Petitioner

Versus

D. Suresh

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records relating to the complaint in S.T.C. No. 1406 of 2019 on the file of the Judicial Magistrate No. IV, Puducherry and quash the same as far as the petitioner is concerned.

For Petitioner : Mr. V.Sakkarapani.

For Respondent : Notice served.

ORDER

This Criminal Original Petition has been filed to quash the private complaint in S.T.C. No. 1406 of 2019 on the file of the Judicial Magistrate No. IV, Puducherry for the offence under Section 420 of the



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Indian Penal Code.

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2. It is alleged in the complaint that the petitioner borrowed a sum of Rs.4,00,000/- and towards the discharge of the loan amount, he has issued a cheque on 18.05.2016. The said cheque which was deposited on 19.05.2016 was returned for the reason 'funds insufficient'. The respondent had issued statutory notice on 26.12.2018 and the said notice was returned on 14.01.2019 with an endorsement as 'insufficient address'. Hence the complaint was filed under Section 420 of the Indian Penal Code. The summons issued to the petitioner says that cognizance was taken under Sections 138 and 102 of the Negotiable Instruments Act.

3. The learned counsel for the petitioner submitted that the offence under Section 138 of the Negotiable Instruments Act is not maintainable as the statutory notice, admittedly, was served two years after the date of return of the cheque. In any event, even assuming that the complaint is only for the offence under Section 420 of the Indian Penal Code, there is no allegation in the impugned complaint to suggest that the petitioner has committed the offence under Section 420 of the Indian Penal Code.



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4. Though notice was served to the respondent and the name has been printed in the cause list, none has entered appearance on behalf of the respondent.

5. Heard the learned counsel for the petitioner and perused the records.

6. The complaint has been filed alleging the offence of cheating. Admittedly, the petitioner has borrowed a sum of Rs.4,00,000/- and towards discharge of the said loan, he has issued a cheque. Non-payment of the loan amount taken by the petitioner due to the dishonoured cheque would not by itself constitute the offence of cheating. It is a case of breach of promise. There are no allegations to show that the petitioner made any false representation etc., The allegation in the present complaint would not attract the offence of Section 420 of the Indian Penal Code.

7. The summons issued by the trial Courts says that the cognizance was taken for the offence under Sections 138 and 102 of the Negotiable



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Instruments Act. The said offence is also not made out since admittedly statutory notice was issued two years after the cheque was dishonoured.

This is clear violation of the mandate of Section 138 (b) of the Negotiable Instruments Act, 1881. Further, it is not known as to why Section 102 of the Negotiable Instruments Act is mentioned in the summons.

8. For all these reasons, the complaint in S.T.C. No. 1406 of 2019 on the file of the Judicial Magistrate No. IV, Puducherry is quashed and this Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petitions are closed.

14.03.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

The Judicial Magistrate No. IV,
Puducherry.



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SUNDER MOHAN, J

ay

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