



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2023

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.22688 of 2023
and Crl.M.P.No.15850 of 2023

R.Elango

... Petitioner

Vs.

P.Prakashkumar

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records and set aside the order passed in Crl.M.P.No.4233 of 2023 in STC No.767 of 2022 dated 14.07.2023 by the learned Judicial Magistrate No.1, Mettur and allow the petition.

For Petitioner : Mr.V.Vijayakumar

ORDER

The petition is filed by the accused in the private complaint under Section 138 of the Negotiable Instruments Act. Contending that the complainant is in the habit of the getting blank cheques from borrowers and used to create in his own



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hand writing according to whims and fancies, filed complaint under Section 138 of the Negotiable Instruments Act.

2.This petitioner wants to call for the cheques in other STC cases filed against third parties by this complainant and send it for hand writing expert's opinion. The case which this petitioner stands trial is STC No.767 of 2022 on the file of the learned Judicial Magistrate No.1, Mettur. This accused wants the cheque which is subject matter of STC Nos.1262 of 2019, 1698 of 2019, 240 of 2020, 44 of 2021 and the cheque in STC No.767 of 2022 which is the subject matter of the case against the petitioner. The intention of the petitioner is to call all these cheques which are subject matter of five different summary trial cases pending in different Courts against different persons and compare the writings in the cheques. Even if the expert opines that all the cheques are written by the same person and that person is the complainant, it will not help the Court to arrive at conclusion that the cheques signed by the petitioner herein was not issued for discharge of enforceable liability. The reverse burden expected under the Negotiable Instruments Act has to be proved in the manner known to law and by calling the cheques in different cases and put to comparison and to establish all the cheques



are written by complainant will not lead to any conclusion. The Trial Court, therefore, has rightly dismissed the petition holding that with the signed blank cheque is voluntarily presented to payee towards some payment, payee may fill up the amount and other particulars. This itself could not invalidate the cheque. The onus could still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence. The above conclusion of the Trial Court is well supported by the decision of the Supreme Court in **Bir Singh Vs. Mukesh Kumar** reported in **CDJ 2019 SC 148** and Section 20 of the Negotiable Instruments Act.

3.This Court dismisses this Criminal Original Petition confirming the order of the Trial Court. Consequently, connected miscellaneous petition is closed.

16.10.2023

Index : Yes/No

Neutral Citation : Yes/No

ssr

To

1.The Judicial Magistrate No.1, Mettur.



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Dr.G.JAYACHANDRAN,J.

SSI

2. The Public Prosecutor,
High Court of Madras,
Chennai – 600 104.

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