



CrI.O.P.No.25991 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2023

CORAM:

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

CrI.O.P.No.25991 of 2019

and

CrI.M.P.No.13821 of 2019

N.Saravanan

... Petitioner

Vs.

S.Dayalan

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in S.T.C.No.492 of 2019 on the file of the Judicial Magistrate, Sholingur in so far as the petitioner/accused is concerned and to quash the same.

For Petitioner : Mr.T.N.Rajagopalan

for M/s.S.Kaithamalai Kumaran

For Respondent : Mr.E.Kannadasan



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ORDER

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This petition has been filed to quash the private complaint under Section 138 of N.I.Act.

2.It is alleged that the petitioner had issued a cheque for Rs.20,00,000/- in the name of the complainant on 22.03.2019. When the said cheque was presented for collection on 22.05.2019, it was returned with an endorsement “payment stopped” and the petitioner had not made payment in respect of the receipt of the statutory notice. Hence, the complaint.

3.The learned counsel for the petitioner submits that the cheque is not issued in discharge of legally enforceable debt or liability. It is specifically stated in the reply notice that 13 bank cheques and 4 blank promissory notes were given as security for the loan of Rs.2,00,000/- taken by him from the complainant. The complainant has misused the cheque and projected as if Rs.10,00,000/- was lent by him and Rs.10,00,000/- was lent by his wife, who is working as a teacher in a



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Government School. The learned counsel further submitted that the complainant's wife being a teacher working in the Government could not have lent money to the tune of Rs.10,00,000/-. The entire case is improbable and false.

4.Learned counsel for the respondent/complainant would submit that the allegations in the complaint show that the cheque was issued only in discharge of legally enforceable debt towards the complainant. The complaint discloses the offence under Section 138 of N.I.Act. The points raised by the petitioner cannot be appreciated in a quash petition, as it is factual in nature.

5. Heard the learned counsel on both sides and perused the materials available on record.



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6. This Court finds that the allegation is that the petitioner has borrowed a sum of Rs.10,00,000/- from the complainant and another Rs.10,00,000/- from the wife of the complainant and issued cheque for Rs.20,00,000/- towards the discharge of the two loans. The points raised by the petitioner that the respondent had misused the blank cheques and they were given as security for the loan of Rs.2,00,000/- taken from the complainant are factual in nature and cannot be adjudicated in a quash petition. The petitioner has to establish his case by proving his defence in the manner known to law. Hence, this Court is not inclined to entertain the quash petition.

7. However, the learned counsel for the petitioner submits that the petitioner is the Government Servant and prays for dispensing with the petitioner's presence before the trial Court. Considering the request made by the learned counsel for the petitioner, the presence of the petitioner before the Trial Court is dispensed with unless his presence is



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deemed necessary by the learned Judicial Magistrate for the progress of
the Trial.

8. In view of the above, this Criminal Original petition stands
dismissed. Consequently, connected Miscellaneous Petition is closed.

15.03.2023

Internet:Yes
Index:Yes/No

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To

1. The Judicial Magistrate, Sholingur.
2. The Public Prosecutor, High Court of Madras.



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SUNDER MOHAN, J.,

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