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Crl.O.P.No.27764 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.27764 of 2022

and

Crl.M.P.No.17078 of 2022

S.Vijayan

... Petitioner / Accused

Vs.

A.Marimuthu

... Respondent / Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in S.T.C.No.131 of 2022 on the file of the Fast Track Judicial Magistrate No.1, Erode and quash the same.

For Petitioner : Mr.J.Ranjithkumar

For Respondent : Mr.E.Leelesh Sundaram
Legal Aid Counsel

ORDER

The petitioner, who was arrayed as an accused in a private complaint filed by the respondent for offence under Section 138 of the



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Negotiable Instruments Act, has filed this Criminal Original Petition seeking to quash the proceedings in S.T.C No.131 of 2022, pending on the file of Fast Track Judicial Magistrate No.1, Erode.

2. The case of the prosecution is that on 09.11.2020, the petitioner / accused borrowed a sum of Rs.12,00,000/- (Rupees Twelve Lakhs only) from the respondent / complainant and agreed to pay interest at the rate of 12% per annum. In discharge of liability, the petitioner / accused issued a post-dated cheque bearing No.00004, dated 19.12.2020 for a sum of Rs.12,00,000/- (Rupees Twelve Lakhs only) drawn on Bank of Baroda, Moolapalayam Branch, Erode. The respondent / complainant presented the same for collection through ICICI Bank, Sathy Road Branch, Erode on 19.12.2020. But the said cheque returned with an endorsement “Kindly Contact Drawer Drawee Bank and Please Present again”. It is further alleged in the complaint that due to return of the said cheque by the Bank, the respondent / complainant sent a legal notice under Section 138(b) of the Negotiable Instruments Act on 12.01.2021 and the same was received by the



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petitioner / accused on 21.01.2021 and the petitioner / accused issued reply notice dated 03.02.2021. Thereafter, the respondent / complainant issued a rejoinder notice on 13.02.2021, but the petitioner / accused did not pay the amount. Therefore, the respondent / complainant proceeded to file a complaint under Section 138 of the Negotiable Instrument Act.

3. The learned counsel appearing for the petitioner / accused would submit that admittedly the cheque was returned “Kindly Contact Drawer Drawee Bank and Please Present again” and he has produced a return memo issued by the Bank. The learned counsel further submitted that though the cheque has been returned by the Bank, the respondent / complainant ought to have presented the cheque once again after contacting the Drawer Drawee Bank and that this issue has been covered by the judgments of this Court in *Sathiya Murthi Vs. Kesava Narayanan* in *Crl.O.P.No.10406 of 2019* and *M/s.Vignesh Builders Vs. M/s.Sastha Associates*, in *Crl.O.P.No.8664 of 2021* wherein, this Court had quashed the complaint which was filed for a return of the cheque for the very same



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reason. He further relied upon the judgment of the Hon'ble High Court of Madhya Pradesh in the case of *Sachin Dubey Vs. Kishore Sharma* reported in **2018 SCC Online MP 1888: (2019) 4 RCR (Cri) 670**, wherein the High Court of Madhya Pradesh had allowed the quash petition and hence, he prayed for quashing of the complaint against him.

4. On earlier occasion, though the respondent / complainant has been served with notice and his name printed in the cause list, none appeared on behalf of the respondent either in person or through counsel. Keeping the petition pending from the 2022 without any progress would serve no purpose. Hence, this Court appointed Mr.R.Leelesh Sundaram, as Legal Aid Counsel for the respondent / complainant.

5. The learned Legal Aid Counsel appearing on behalf of the respondent / complainant would submit that the cheque was returned with an endorsement “Kindly Contact Drawer Drawee Bank and Please Present again”. The learned Legal Aid Counsel pointed out that the High Court of



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Madhya Pradesh quashed the case on the identical ground raised by the petitioner. The grounds raised by the petitioner therein are that firstly, the legal notice not served within a statutory period and secondly, on the basis of the remark noted on the cheque return memo. The said case appealed before the Hon'ble Apex Court in Crl.A.No.1326 of 2019 arising out of SLP (Crl) No.166 of 2019. The Hon'ble Apex Court by judgment dated 03.09.2019 had set aside the impugned judgment of the Madhya Pradesh High Court in the case of **Kishore Sharma vs. Sachin Dubey** and held that the points raised by the petitioner therein have to be decided during the time of trial. Hence, the grounds raised by the petitioner is a matter of fact to be decided only during trial.

6. The learned Legal Aid Counsel further submitted that the Madurai Bench of this Court in Crl.O.P.No.20653 of 2016 dated 26.11.2020, has relied upon the judgments of the Hon'ble Apex Court in the case of **Devendra Prasad Singh Vs. State of Bihar and another in Crl.A.No.579 of 2019, Central Bureau of Investigation Vs. Arvind**



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Khanna in Crl.A.No.1572 of 2019 and M.Jayanthi Vs. K.R.Meenakshi and another in Crl.A.No.1817 of 2019 and held that the defence of the accused has to be tested after appreciating the evidence during trial. Hence, he prayed for dismissing the quash petition.

7. I have heard the submissions made by the learned counsel for the parties and perused the materials placed before this Court.

8. It is seen that the only ground that has been raised by the learned counsel for the petitioner is that, the cheque has been returned by the Bank requesting the respondent / complainant to contact the Drawer - Drawee Bank and present it again. The respondent without complying with the same has proceeded to file the complaint under Section 138 of the Negotiable Instrument Act.

9. In the case **Sachin Dubey as cited Supra**, the High Court of Madhya has allowed the quashing petition filed by the petitioner on the



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ground that the legal notice has not been served on the respondent within the statutory period and secondly, on the basis of the remark noted on the cheque return memo "Kindly Contact Drawer Drawee Bank and Please Present again". However, both the points have now been considered by the Hon'ble Apex Court in the case of *Kishore Sharma cited supra* and the order of the impugned judgment was set aside. The Hon'ble Apex Court held that the return of cheque for the above said reason cannot be a reason to quash the proceedings and it has to be tested, decided only during trial.

10. The above judgments referred by the learned Legal Aid Counsel for the respondent / complainant are squarely applicable to this case and as such, the points raised by the petitioner / accused cannot be considered by this Court under Section 482 Cr.P.C.

11. In view of the above discussion, this Court is not inclined to quash the proceedings in S.T.C No.131 of 2022 on the file of the Fast Track Judicial Magistrate No.1, Erode. The petitioner is at liberty to raise all the



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grounds before the trial Court. However, The personal appearance of the petitioner / accused is dispensed with. The trial Court is directed to complete the trial as expeditiously as possible.

12. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

13. This Court places its appreciation for the Legal Aid Counsel's research, thorough preparation and making effective submissions in this case.

28.06.2023

NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No

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To
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The Fast Track Judicial Magistrate No.1,
Erode.



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M.NIRMAL KUMAR, J.

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