



CrI.O.P.No.30021 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

CrI.O.P.No.30021 of 2019
and
CrI.M.P.Nos.16214 & 16216 of 2019

N.S.Nataraj

...Petitioner

Vs.

Indian Overseas Bank,
Sankri road, Tiruchengode.
Branch represented by its power of attorney,
and Power Agent its Branch Manager,
R.Subramani, Roll No.35466,
S/o.Ramasamy, Tiruchengode.

...Respondent

Prayer:- Criminal Original Petition filed under Section 482 of Cr.P.C., calling for the records in STC.No.35 of 2018 on the file of the Judicial Magistrate Fast Track Court, Magisterial Level, Tiruchengode and quash the same.

For Petitioner : Mr.M.Mariappan

For Respondent : Ms.Ananda Gomathy

ORDER



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This petition is filed to quash the complaint in STC.No.35 of 2018 for

the offences under Section 138 of the Negotiable Instrument Act.

2.It is alleged that A1 / the petitioner herein issued a cheque in favour of A2, which is a partnership firm; that A3 and A4 are its partners; that A1 had endorsed the cheque in favour of the complainant / Bank; that when the cheque was presented for collection, it was returned with endorsement 'payment stopped by drawer of the cheques' and that though statutory notice was received by the accused, they did not make the payment.

3.The learned counsel appearing for the petitioner would submit that he had no relationship with the complainant. Admittedly, he had issued a cheque in favour of the 2nd accused and even with regard to 2nd accused, he had no liability and the cheque was issued only as advance towards sale of property. Hence, he prayed for quashing of the complaint.

4.The learned counsel appearing for the respondent would submit that



there is a clear averment in the complaint stating that accused No.2, which is a firm had endorsed the cheque in favour of the complainant / Bank. In view of the endorsement, the complainant is a holder in due course and as per the provisions, the holder in due course can maintain a complaint against the drawer of the cheque and hence, prayed for dismissal of the quash petition.

5.This Court finds that the cheque was drawn by the petitioner in favour of the 2nd accused firm. The 2nd accused firm endorsed the cheque in favour of the complainant Bank. Section 9 of the Negotiable Instrument Act defines Holder in Due Course, which reads as follows:-

9."Holder in due course".- "Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer,

or the payee or indorssee thereof, if [payable to order,] before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

6.The averment in the impugned complaint suggests, the complainant



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is a holder in due course of the cheque. Section 138(b) and (c) makes it clear that a holder in due course has to be treated on par with the payee of the cheque and he can maintain a complaint. As regards liability it is a disputed question of fact and the petitioner has to raise it only before the Trial Court.

7.In view of the same, the complaint cannot be quashed. However, the learned Trial Judge is directed to expedite the trial and in any event conclude it within a period of six months from the date of receipt of a copy of this order.

8.This Criminal Original Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

24.03.2023

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Internet : Yes/No

Index: Yes/No

Speaking / Non-speaking order

Nuetral Citation :Yes/No



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To:-

WEB COPY

- 1.The Judicial Magistrate Fast Track Court,
Magistrate Level,
Tiruchengode
- 2.The Public Prosecutor
High Court of Madras,
Madras.

SUNDER MOHAN, J.



WEB COPY



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