



WEB COPY



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.29261 of 2019

And

Crl.M.P.Nos. 15776 & 15779 of 2019

K.Nandhakumar

... Petitioner/Accused

Vs

A.Suresh Kumar

... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the case in S.T.C.No. 273 of 2019 on the file of the learned Judicial Magistrate No.1, Udumalpet, quash the same.

For Petitioner : Mr. D.R.Arun Kumar

For Respondent : M/s.P.V.Rajeshwari

ORDER

This Petition is to quash a private complaint under Section 138 of the Negotiable Instruments Act.



2. The allegation in the complaint is that the respondent was engaged to construct a building on behalf of the petitioner; that the total agreed amount of Rs. Sixty five lakhs, out of which the petitioner had paid Rs. 41,69,300/-; that the balance amount of Rs.21,80,000/- was paid by way of a cheque; that when the said cheque was presented for collection the same was dishonoured for the reason 'funds insufficient'. Hence, the complaint.

3. The learned counsel for the petitioner would submit that the petitioner and the defacto complainant had no relationship whatsoever. The petitioner had never paid Rs.41,68,300/- and that he had no occasion to issue 'Non CTS' cheque in the year 2019. The learned counsel would further submit that the impugned complaint is an abuse of process of law.

4. The learned counsel for the respondent would submit that there are allegations in the impugned complaint attracting the offence under Section 138 of the Negotiable Instrument Act. It is for the petitioner to rebut the statutory presumption under Section 139 before the trial Court. The points raised by the petitioner cannot be adjudicated in a quash petition and hence, prayed for dismissal of the quash petition.



5. This Court finds that the points raised by the petitioner that he is not liable to pay the cheque amount to the complainant and that there was no necessity for him to issue 'Non CTS' cheque which was not in force after 2010, in the year 2019, cannot be adjudicated in this quash petition. It is for the petitioner to raise all his contentions before the trial Court. Hence, this Court is not inclined to entertain the quash petition. However, the petitioner is at liberty to raise all the points before the trial Court. The appearance of the petitioner before the trial Court is dispensed with unless the learned Magistrate deems his presence necessary for the progress of the case.

6. With the above observation, this Criminal Original Petition is dismissed. Consequently, CrI.M.P.No. 15779 of 2019 is allowed and CrI.M.P.No. 15776 of 2019 is dismissed.

05.04.2023

vsg

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



4

SUNDER MOHAN. J.

vsg

To

Judicial Magistrate No.1, Udumalpet.

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