



Crl.O.P.No.24872 of 2023
& Crl.M.P.No.17259 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.11.2023

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.24872 of 2023
& Crl.M.P.No.17259 of 2023

Mr.Sham Narain,

... Petitioner/Accused

/versus/

G.Arulanantham,

... Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., pleaded to call for the records in S.T.C.No.122 of 2022 on the file of Fast Track Court, Magistrate Level, Tiruvallur, for the offence under Section 138 of Negotiable Instruments Act, 1881 and quash the same.

For Petitioner : Mr.S.Mahaveer Shivaji



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ORDER

Heard the Learned Counsel for the petitioner. It is a case to quash a private complaint on the ground that, there is no enforceable debt for initiating under Section 138 of N.I Act proceedings.

2. The Learned Counsel for the petitioner read through the complaint, statutory notice given by the complainant, reply by the accused and re-joinder by the complainant as well as the loan document purported to have been availed by the petitioner.

3. The case of the petitioner is that, a cheque and his property document given to the complainant to avail loan from the Bank been misused by the complainant. In this connection, there is a civil suit also pending. The complainant, who is the respondent herein has misused the cheque and presented for collection and thereafter, initiated the criminal prosecution. To the statutory notice, he has promptly replied narrating the circumstances under which the cheque was given to him and had refuted the liability, despite that, the complainant has filed complaint before the Metropolitan Magistrate Court under



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Section 138 of N.I. Act. Reading of the statutory notice and the complaint indicates that the cheque was given to discharge the hand loan availed by the petitioner/accused in the year 2016. Whereas, in the reply notice of the petitioner, he claims that these cheques given as a collateral security to the defacto complainant for availing loan from ICICI Bank in the year 2016. The disputed facts are to be tested during the course of trial. Under Section 482 of Cr.P.C., court cannot summarily waive the material placed before the Court to decide about the disputed facts.

4. The Learned Counsel for the appellant rely upon the judgment of the Hon'ble High Court of Karnataka in ***Sama Dharman and another -vs- S.Natarajan, dated 25.07.2012***, which is in respect of a time barred debt where the Court was satisfied that the complaint filed in respect of a cheque which is not legally enforceable under law due to limitation. The said judgment has no relevancy to the case in hand.



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5. Accordingly, the Criminal Original Petition is dismissed.

Consequently, connected Miscellaneous Petition is closed.

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Index :Yes/No.

Internet :Yes/No.

Speaking Order/Non-Speaking Order

bsm

Copy to:-

1. The Fast Track Court, Magistrate Level, Tiruvallur.



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DR.G.JAYACHANDRAN, J.

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