



Crl.O.P.No.32258 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2023

CORAM

THE HON'BLE Mr.JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.32258 of 2022

and

Crl.M.P.Nos.19845 and 19847 of 2022

G.Palani

... Petitioner

-Vs.-

S.Dhanasekar

.. Respondent

Criminal Original Petition filed under Section 482 of Code of Criminal Procedure to call for the entire records in C.C.No.5279 of 2020 on the file of the learned FTC-II Metropolitan Magistrate Court, Allikulam, Egmore and quash the same as against the petitioner.

For Petitioner :Mr.D.Senthil Kumaar

ORDER

This Criminal Original Petition has been filed to call for the entire records in C.C.No.5279 of 2020 on the file of the learned FTC-II Metropolitan Magistrate Court, Allikulam, Egmore and quash the same as against the petitioner.



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2. The learned counsel for the petitioner submitted that the respondent filed a case under Section 138 of the Negotiable Instruments Act alleging that on 04.10.2019 the petitioner borrowed a sum of Rs.10,00,000/- (Rupees Ten Lakhs Only) agreeing to pay the same with interest of 24% per annum. Thereafter it is alleged that the petitioner issued a cheque bearing No.000051 dated 07.11.2020 of Karur Vysya Bank, Chennai Anna Nagar Branch for a sum of Rs.12,40,000/- (Rupees Twelve Lakhs Forty Thousand only) to clear the debt/liability of Rs.10,00,000/- with interest. When the cheque was presented for collection, it is alleged that it was returned as "Account Closed". Therefore, the case was filed.

3. It is further submitted by the learned counsel for the petitioner that there are serious discrepancies in the case of the respondent and the documents filed by the respondent. A xerox copy of the document styled as "கடன் பத்திரம்" dated 04.10.2019 is produced, which according to the petitioner was produced by the respondent in C.C.No.5279 of 2020. The learned counsel for the petitioner drew the attention of this Court to



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the aforesaid document and submitted that as per this document a sum of Rs.10,00,000/- was said to have been borrowed for the purpose of construction of building. The learned counsel for the petitioner has also produced letter dated 16.11.2015 and claims it as invitation for inviting the guests for house warming ceremony on 23.11.2015. According to the learned counsel for the petitioner, this letter establishes the fact that the building construction was completed as early as in the year 2015 and house warming ceremony was also conducted. Therefore, the recitals made in "கடன் பத்திரம்" dated 04.10.2019 that a sum of Rs.10,00,000/- was borrowed for the purpose of construction of building is not true. If the said document is not true, the claim that the petitioner is liable to pay the respondent Rs.10,00,000/- with interest is also not true.

4. The learned counsel for the petitioner also brought to the notice of this Court that the impugned cheque bearing No.000051 was issued on 07.11.2020. However, he showed from the statement of account of the petitioner that even as early as on 16.06.2014, a cheque bearing No.000058 was deposited for collection. Therefore it is not practically



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possible for giving a cheque bearing No.000051 in the year 2020. For these reasons, the learned counsel for the petitioner submitted that there is no legally enforceable debt/liability and the cheque was not issued for discharging any legally enforceable debt. Further it was submitted that in the year 2014, the impugned cheque was given as security when the petitioner borrowed a sum of Rs.2,00,000/- as hand loan and the same is used for filing this case. Thus, the learned counsel for the petitioner prayed for quash of the proceedings in C.C.No.5279 of 2020.

5. Considered the submission made by the learned counsel for the petitioner. His submission that the construction of the building was completed even in 2015 and that the house warming ceremony was also conducted in the year 2015 and therefore the recitals made in “கடன் பத்திரம்”/Loan Document dated 04.10.2019 claiming that the loan was obtained for construction of building is not correct and that cheque bearing No.000051 could not have been issued in 2020, that there is no legally enforceable liability, are all the disputed facts and it requires evidence to prove this case. This Court sitting in Section 482 CrPC



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cannot go into these disputed facts. The fact remains that the cheque bearing No.000051 given by the petitioner, when it was presented for collection was returned as account closed. There is no material produced to show that when the account was closed, there was sufficient fund available in the account of the petitioner. Therefore the respondent has made out a case for prosecuting the petitioner for offences under Section 138 of Negotiable Instruments Act.

6. In view of the above, this Court finds no merits in this petition. Therefore this Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petitions are also closed.

03.01.2023

Speaking/Non-speaking order

Index: Yes/No

Internet : Yes/No

nsa

To

The FTC-II Metropolitan Magistrate,
Allikulam,
Egmore



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G.CHANDRASEKHARAN.J.,

nsa

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