



Crl.O.P.(MD)No.3924 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.03.2023**

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.3924 of 2023

and

Crl.M.P.(MD)Nos.3517 and 3518 of 2023

Thanga Esakki

... Petitioner/
sole accused

Vs.

W.M.S.Mohuthoom Mohammed

... Respondent/
Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the impugned proceedings in S.T.C.No.542 of 2021 pending on the file of the Judicial Magistrate Court at Tiruchendur and to quash the same.

For Petitioner : Mr.M.Karuppasamy

ORDER

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records pertaining to the



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impugned proceedings in S.T.C.No.542 of 2021 pending on the file of the Judicial Magistrate Court, Tiruchendur and quash the same.

2. The case of the prosecution is that the petitioner/accused has borrowed a sum of Rs.5,00,000/- from the respondent/complainant on 17.01.2021 and he had promised to repay the same within 3 months, that the petitioner in order to discharge the said liability has issued a cheque for a sum of Rs.5,00,000/- drawn on Karur Vysya Bank, Tiruchendur Branch and that when the cheque was presented for collection, the same was returned for insufficient funds in the bank account of the petitioner. Hence, the respondent has filed a private complaint under Section 200 Cr.P.C. against the petitioner for the offences under Sections 138 r/w 142 of Negotiable Instruments Act and the learned Judicial Magistrate, after completing the necessary formalities, has taken cognizance of the case in S.T.C.No.542 of 2021 and the same is pending on the file of the Judicial Magistrate Court, Tiruchendur.

3. The main contention of the petitioner is that the petitioner's cheque was lost and the same was utilized by the respondent. These



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factual aspects cannot be gone into the petition filed under Section 482 Cr.P.C. and it is matter for trial.

4. The Hon'ble Supreme Court in the case of ***State of Haryana and others Vs. Bhajan Lal and others*** reported in ***1992 SCC (Cri) 426*** has enumerated 7 categories of cases, where the power can be exercised under Section 482 of Code of Criminal Procedure and the same are extracted hereunder:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.



(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever



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reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

5. In ***Dr.Dhruvaram Murlidhar Sonar Vs. The State of Maharashtra and others*** reported in **2019 (18) SCC 191**, the Hon'ble Apex Court has specifically held that exercise of powers under Section 482 Cr.P.C. to quash the proceedings is an exception and not a rule. It is settled law that the inherent jurisdiction under Section 482 Cr.P.C. is wide but at the same time, the same is to be exercised sparingly, carefully



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and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself.

6. The Hon'ble Supreme Court in ***Kaptan Singh Vs. The State of Uttar Pradesh and others*** reported in ***2021 (3) Crimes 247*** has stated that, that Court in catena of decisions has observed that the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial and that question is required to be examined keeping in view, the contents of FIR and *prima facie* materials, if any, requiring no proof and at such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and materials relied on.

7. A cursory perusal of the complaint and the other records produced along with the complaint makes out a *prima facie* case against the petitioner. Hence, this Court is not inclined to quash the charge sheet in S.T.C.No.542 of 2021 pending on the file of the learned Judicial Magistrate Court, Tiruchendur. However, since the case is pending for



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the past two years, the trial Court is directed to complete the trial and dispose of the case in S.T.C.No.542 of 2021 within a period of three months from the date of receipt of a copy of this order.

8. With the above direction, this Criminal Original Petition stands disposed of. Consequently, connected Miscellaneous Petitions are closed.

03.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
csm

To

1.The Judicial Magistrate,
Tiruchendur.



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K.MURALI SHANKAR,J.

csn

Order made in
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