



Crl.O.P.(MD)No.4048 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.4048 of 2023

and

Crl.M.P.(MD)Nos.3620 and 3621 of 2023

Ayyappan

... Petitioner/
accused

Vs.

Senthilkumar Deivendran

... Respondent/
Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for records relating to S.T.C.No.171 of 2022 on the file of the Judicial Magistrate Fast Track Court, Uthamapalayam, Theni District and to quash the said proceedings as against the petitioner herein.

For Petitioner : Mr.S.Sundarapandian

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.171 of 2022 pending on the file of the Judicial Magistrate Fast Track Court, Uthamapalayam, Theni District and quash the same.

2. The case of the complainant is that the petitioner has borrowed a sum of Rs.7,00,000/- from the complainant on 01.07.2021 and for which, the petitioner has issued a post dated cheque in favour of the complainant bearing No.078557 dated 05.08.2022 drawn on Axis Bank, Cumbum Branch, that when the complainant has represented the cheque on 10.08.2022 for collection, the same was returned with reason “Insufficient Funds” and that thereafter the complainant has filed a 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.171 of 2022 and the same is pending on the file of the Judicial Magistrate Fast Track Court, Uthamapalayam, Theni District.

3. The main contention of the petitioner is that he has already discharged the loan amount due to one Daniel and the said Daniel has



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given a statement about the alleged transaction. But, these factual aspects cannot be gone into in the petition filed under Section 482 Cr.P.C. and this defence of discharge can very well be proved before the trial Court.

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



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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;



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(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 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



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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 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 complaint in



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S.T.C.No.171 of 2022 pending on the file of the learned Judicial
Magistrate Fast Track Court, Uthamapalayam, Theni District.

8. In the result, this Criminal Original Petition stands dismissed.

Consequently, connected Miscellaneous Petitions are closed.

03.03.2023

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

To

1.The Judicial Magistrate Fast Track Court,
Uthamapalayam, Theni District.



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K.MURALI SHANKAR,J.

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Order made in
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