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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	09/02/2023
Date of Pronouncement	09/03/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.OP(MD)No.3508 of 2019

and

Crl.MP(MD)Nos.2005 and 2006 of 2019

Valar Green Blue Metals
represented by its Proprietor
S.K.Senthil Murugan : Petitioner/Respondent

Vs.

Ganesh Kumar : Respondent/Complainant

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the entire records pertaining to CC No.616 of 2018 pending on the file of the Fast Track Court (JM), Karur and quash the same.

For Petitioner : Mr.R.Ramasamy

For Respondent : Mr.K.Chengizkhan

**ORDER**

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This Criminal Original Petition has been filed seeking quashment of the case in CC No.616 of 2018 pending on the file of the Fast Track Court (JM), Karur.

2.The facts in brief:-

The respondent as complainant filed a complaint under section 200 of the Criminal Procedure Code stating that on 25/12/2017, the petitioner herein, who is the accused obtained a sum of Rs.3,00,000/- as hand loan. On the same day itself, he executed a promissory note. Later, he failed to repay the loan amount with interest. In the month of February, 2018, the accused executed the alleged cheque bearing No.046186 for Rs.2,50,000/-, which is a posted-dated one, in the capacity of the proprietor of Valar Green Blue Metals. It was presented for payment, on 12/04/2018 and returned as 'Funds Insufficient. After completing the statutory formalities, the complaint was filed.



3.The petitioner herein received the summon and filed this petition seeking quashment of the entire proceedings on the following grounds;-

This complainant is not known to him; One Prabhakaran had litigation with his client over the purchase of some property. As a mediator, he settled the issue. At that time, he gave 10 unfilled cheques bearing Nos.046186 to 046195, some promissory notes, stamp papers, etc. After the above said settlement, those were returned. So enquiry was undertaken by the Deputy Superintendent of Police, DCB, Trichy, on the basis of the complaint lodged by him. In the above said enquiry, one T.Ganeshkumar executed a consent letter stating that he received the amount in the above said dispute. The above said Prabhakaran's case and this case are one and the same. With the connivance of the above said person, the cheque has been misused. More-over, the Proprietor has not added as an accused. The complainant himself has agreed to settle and gave receipt for Rs.1,50,000/- in October, 2018 itself. It is highly improbable that in the month of December 2018, the complainant gave hand loan to the petitioner.



4.The petitioner was heard. There is no representation for the respondent, even though Advocate entered appearance.

5.The first legal issue, that has taken by the petitioner is that Valar Green Blue Metals, which is the proprietary concern is not added as an accused, since it has been stated by the respondent that only in the capacity of the above said proprietorship, the cheque was issued.

6.When we go through the copy of the cheque, it is seen that on the part of the company in the capacity of authorised signatory, this petitioner has signed in the cheque in favour of one T.Ganeshkumar, who is the complainant herein. In respect of proprietary concern, it is enough, if the concern is represented by proprietor, it is not necessary or required that the above said concern must also be shown as an accused. Because, it is not the case of the complainant that they had dealing with the above said company. But it is the case of the complainant that in the independent capacity only, this petitioner borrowed a sum of Rs.3,00,000/-. But however,



7.Regarding the settlement in the police station, it is purely a factual issue. What sort of enquiry was undertaken in the police station is purely a matter for consideration at the time of trial.

<https://www.mhc.tn.gov.in/judis>



9. In the enquiry, on 27/07/2017 before Deputy Superintendent of Police (DCP), Trichy, Rs.1,50,000/- was paid and the remaining amount was also paid to the above said Prabhakaran. So what happened to the above said complaint is a matter for consideration during trial.

10. No doubt, the disputed cheque number is also mentioned in the above said complaint. The complaint is dated 08/12/2018. The above said receipt of Rs.1,50,000/- by the respondent is, dated 23/08/2017. So it clearly shows that some sort of transaction took place between this petitioner and the above said Prabhakaran and the respondent herein. All those things must be brought on record during the course of trial. While exercising the power under section 482 of the Criminal Procedure Code, this court cannot enter into the factual disputed questions.

11. Whether the documents relied are denied or admitted by the respondent could not also not be found. So the matter must be tried to its logical conclusion.



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12.In the result, this criminal original petition is **dismissed**. Consequently, connected Miscellaneous Petitions are closed.

09/03/2023

Index:Yes/No
Internet:Yes/No
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To,

The Fast Track Court (JM),
Karur.



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G.ILANGOVAN, J

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