



Crl.O.P.(MD) No.7933 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.08.2023

CORAM:

THE HONOURABLE DR.JUSTICE D.NAGARJUN

Crl.O.P.(MD) No.7933 of 2023
and
Crl.M.P.(MD)Nos.6939 and 6941 of 2023

A.Amalraja

... Petitioner

Vs.

K.Vanithamani

..Respondent

PRAYER:Criminal Original Petition is filed under Section 482 of Cr.P.C, to call fro the records relating to the impugned private complaint in C.C.No.120 of 2023 on the file of the District Munsif cum Judicial Magistrate Court, Ramaeswaram and quash the same.

For Petitioner :Mr.V.M.Jegadeeshapandian
For Respondent :Mr.T.Veerakumar

ORDER

This Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure seeking quashment of the charge sheet in C.C.No.120 of 2023



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2.The petitioner is the accused in CC.No.120 of 2023 pending on the file of the learned District Munsif cum Judicial Magistrate, Rameswaram. It is submitted by the learned counsel for the petitioner that the respondent/complainant is a stranger to the petitioner. The petitioner has received money from the husband of the respondent towards sale agreement and as a guarantee to the said amount, he has handed over the signed blanked cheques to the husband of the respondent and the husband of the respondent by misusing the cheques given by the petitioner filed a false case through the respondent, therefore, sought for suitable directions. It is further submitted by the learned counsel for the petitioner that in respect of the agreement of sale between the petitioner and the respondent's husband, the respondent's husband has filed O.S.No.292 of 2019 on the file of the Additional Sub Court, Dindigul seeking specific performance of agreement of sale.

3.Even according to the petitioner, the cheque in dispute was given by the petitioner and the same was returned as dishonored and the petitioner has



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received statutory notice prior to filing of complaint, but has not given any reply.

Considering the submissions made by the learned counsel on either side and on perusal of the records, the defence taken by the petitioner requires to be decided only after full-fledged trial. The petitioner is expected to produce the relevant documents, agreement of sale, copies of the plaint and also produce the witnesses through his contentions that the cheques were given to the respondent's husband only as security in respect of the transactions of agreement of sale and that he has not borrowed any amount from the respondent, who is allegedly a stranger. These issues cannot be decided in this petition filed under Section 482 of the Code of Criminal Procedure.

4.It is submitted by the learned counsel for the respondent that if at all the petitioner takes whatever defence, he should have replied on receipt of the notice prior to the filing of the complaint.

5.On going through the charge sheet including the statements under Section 161 Cr.P.C., it is clear that there are overt acts against the petitioner. The Hon'ble Supreme Court has laid down the guidelines for exercising of inherent power



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under Section 482 of the Cr.P.C. for quashing the criminal proceeding in the case of *State of Haryana v. Bhajanlal* reported in *1992 SCC (Cri) 426*, which reads as follows:-

"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 FIR 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.



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(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 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."



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6.It is to be examined as to whether the facts of the case will fall in any one of the circumstances as held by the Hon'ble Apex Court to consider whether the case against the petitioner can be quashed.

7.It is not a case, where the petitioner is seeking quashment of the charge sheet on the ground that there is a statutory embargo in continuation of the proceedings. On going through the charge sheet, it is clear that the allegations levelled against the petitioner are not vague and that the statements of the witnesses are clearly against the petitioner. It is submitted further that the witnesses examined by the prosecution have given the false statements under 161(3) Cr.P.C.

8.On going through the contention of the petitioner and on considering the defense put forth by the petitioner, it cannot be decided at this stage as to which one of the versions is correct. Unless, the trial is conducted, the truth or otherwise of the statement of the witnesses cannot be appreciated. Therefore, it is a fit case, where the case has to be referred to the trial Court as there is *prima facie* material against the petitioner.



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9. Accordingly, this Criminal Original Petition is disposed of directing the trial Court to dispose of CC.No.120 of 2023 as quickly as possible. However, considering the fact that the petitioner is working as Secondary Grade Teacher at Boothagudi, his personal appearance before the trial Court is dispensed with. However, the trial Court is at liberty to direct all the accused to be present for answering the charges, 313 examination and for any such purposes at any stage of the case for smooth progression of the trial. Consequently, connected Miscellaneous Petitions are closed.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

24.08.2023

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To

1. The District Munsif cum Judicial Magistrate, Ramaeswaram.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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DR.D.NAGARJUN. J.

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