



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2024

CORAM

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

CrI.O.P.No.9828 of 2023

and

CrI.M.P.No.6457 of 2023

A.Ariyaselvam

... Petitioner

Vs.

Varadaraj

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, calling for the records relating to the criminal case in C.C.No.8 of 2023 on the file of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Kallakurichi, quash the same by allowing this quash petition.

For Petitioner : Mr.N.Manoharan

For Respondent : Mr.R.Thirumoorthy

ORDER

This quash petition has been field to quash the proceedings in C.C.No.8 of 2023 pending on the file of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Kallakurichi.



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2. The respondent has filed a private complaint against the petitioner for offence under Section 138 of the Negotiable Instrument Act. The case of the respondent is that the petitioner had taken a hand loan of a sum of Rs.3,00,000/- on 09.07.2022. This amount was not repaid back. Hence, the petitioner issued three cheques each for a sum of Rs.1,00,000/- to the respondent. When the cheques were presented for collection, it was returned with an endorsement “funds insufficient”. After the statutory notice was issued, a private complaint was filed before the Court below as against the petitioner for offence under Section 138 of the Negotiable Instrument Act.

3. Heard Mr.N.Manoharan, learned counsel for the petitioner and Mr.R.Thirumoorthy, learned counsel for the respondent.

4. The main ground that was urged by the learned counsel for the petitioner is that not even the name of the respondent is found in the cheques and whereas, the offence under Section 138 of the Negotiable Instrument Act can be prosecuted either by the payee or by the holder in due course which terms have been defined under Sections 7, 8 and 9 of the Negotiable



Instrument Act. In the instant case, there was not even a name mentioned in whose favour the cheque was drawn and therefore, the complaint itself is not maintainable and the same requires to be interfered by this Court. To substantiate the same, Sections 138(C) and 142(A) of the Negotiable Instrument Act was also relied upon.

5. This Court has carefully considered the submissions made on either side and materials available on record.

6. On carefully going through the cheque that was issued in favour of the respondent, it is seen that even a name in favour of whom this cheque was drawn is not available. In view of the same, the requirements under Sections 138(C) and 142(A) of the Negotiable Instrument Act have not been satisfied. The respondent / complainant has not even established whether he is the payee, holder or holder in due course. In view of the same, the Court below ought not to have taken cognizance. The continuation of the private complaint as against the petitioner will result in abuse of process of Court which requires interference of this Court.



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7. In the light of the above discussion, the proceedings in C.C.No.8 of 2023 pending on the file of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Kallakurichi is hereby quashed. The learned counsel for the respondent submitted that the respondent must be given liberty to prosecute the criminal case as against the petitioner. It is not necessary for this Court to consider this plea made by the learned counsel for the respondent. If any remedy is available to the respondent under law, it is always left open to the respondent to exercise that right.

8. In the result, the Criminal Original Petition stands allowed. Consequently, the connected Miscellaneous Petition is closed.

09.01.2024

skr

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

Note: Issue order copy by 12.01.2024

To

The Public Prosecutor,
Madras High Court,
Chennai.



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N. ANAND VENKATESH, J.

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