



WEB COPY



Crl.OP.No.16100 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.OP.No.16100 of 2024

and

Crl.MP.Nos.9822 and 9824 of 2024

O.Murugesan

... Petitioner

Vs.

A.Ganesan

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the entire records in S.T.C.No.145 of 2023 on the file of the Fast Track Court, Judicial Magistrate Level-I, Attur, Salem District and quash the same.

For Petitioner : Mr.M.Pitchai Muthu

ORDER

This Criminal Original Petition is filed to quash the private complaint initiated under Section 138 of Negotiable Instruments Act .

2. The learned counsel appearing for the petitioner submits that



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two cheques purported to have been given by the petitioner herein to the complainant which is subject matter of STC.No.145 of 2023 on the file of FTC Judicial Magistrate Level-I, Attur, Salem. Both the cheques were not given to discharge the debt payable to the complainant. The cheque which was given to one Thavamani, as security been misused by the complainant.

3. The learned Counsel further submits that that apart, it is also contended that out of two cheques, each for Rs.10,00,000/- . One cheque bearing No.105375 for Rs.10,00,000/- not even presented before the bank for collection and therefore, no cause of action to initiate complaint under Section 138 of Negotiable Instruments Act in respect of the complaint. However, the trial Court has taken cognizance for both the cheques. Regarding the other cheque bearing No.105373 for Rs.10,00,000/- . He further submits that this cheque for Rs.10,00,000/- been presented by the complainant without any enforceable debt.

4. This Court after perusing the records finds that STC.No.145 of 2023 is filed for issuing two cheques, each Rs.10,00,000/- one bearing No.105373 and another bearing No.105375. Out of which, only one cheque bearing No.105373 has been presented and the same was returned with a memo dated 15.07.2023 stating “ funds insufficient”



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whereas the another cheque i.e, cheque bearing No.105375 has not been accepted by the bank and was returned. Since there is a material alteration as per Section 87 of Negotiable Instruments Act, there is any material alteration in the instrument. Such instrument will become void. Section 138 of Negotiable Instruments Act provides a cause of action to initiate a complaint only if the cheque is presented and dishonoured.

5. In this case, the second cheque bearing No.105375 not been presented, and the bank has returned it, being it a void instrument. Therefore, this Court is of the view that there cannot be any criminal prosecution under Section 138 of Negotiable Instruments Act regarding the second cheque 105375. As far as the first cheque which was presented and dishonoured, the criminal prosecution has to be proceed.

6. With this clarification, this Criminal Original Petition is partly allowed, the complaint as against the petitioner in respect of cheque No.105375 alone stands quashed. The trial Court shall proceed against the petitioner herein in respect of the cheque No.105373. Consequently, the connected miscellaneous petitions are closed.

Vv

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To
The Fast Track Court,
Judicial Magistrate Level-I,
Attur, Salem District.

Dr.G.JAYACHANDRAN,J.



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