



Crl.O.P.No.18631 of 2023

In the High Court of Judicature at Madras

Dated : 06.3.2024

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Criminal Original Petition No.18631 of 2023
& Crl.M.P.Nos.12416 & 12418 of 2023

Mr.J.Balaji

...Petitioner

Vs

Dhandapani

...Respondent

PETITION under Section 482 of the Criminal Procedure Code praying to call for the records in connection with the proceedings in S.T.C.No.57 of 2023 on the file of the Judicial Magistrate-Fast Track Court No.1, Erode and quash the same by allowing this criminal original petition.

For Petitioner : Mr.M.Abishek
For Respondent : Served & no appearance

ORDER

This is a petition filed by the petitioner seeking to quash the proceedings in S.T.C.No.57 of 2023 on the file of the Judicial



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Magistrate-Fast Track Court No.1, Erode.

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2. When the matter came up for hearing on 17.8.2023, this Court passed the following order :

"Notice to the respondent returnable by six weeks. Private notice is also permitted.

2. The complaint was filed by the respondent for offence under Section 138 of the Negotiable Instruments Act, 1881 on the ground that the petitioner had borrowed hand loan of a sum of Rs.1,80,000/- and towards the same, the post-dated cheque was issued bearing No.000873, dated 16.08.2022. However, the very same respondent had issued earlier legal notice, dated 15.09.2021, wherein, he states that the petitioner received the hand loan of Rs.1,80,000/- on 18.07.2021 and towards the same, he issued cheque bearing No. 000021, dated 18.08.2021 and when the same was deposited, it was dishonoured. Therefore, it was contended that for the very same hand loan, the respondent had misused a cheque that was given as a security. Prima facie case has been made out and there shall be an order of interim stay pending disposal of the Criminal Original Petition.

3. Post this case after six weeks."

3. Thereafter, the case was listed for hearing on 09.1.2024 and despite service of notice on the respondent and printing his name in



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the cause list, he had not chosen to appear either in person or through counsel. Hence, this Court once again directed the case to be listed on 11.1.2024 to give one more opportunity to the respondent. Even today, there is no representation on behalf of the respondent either in person or through counsel.

4. In the instant case, the only issue, which falls for consideration of this Court is as to whether there was a legally enforceable debt that can be claimed with the subject cheque, which has been utilized for the purpose of filing a complaint under Section 138 of the Negotiable Instruments Act.

5. It is evident from the statutory notice dated 15.9.2021 wherein it has been stated that the petitioner received a hand loan of Rs.1.80 lakhs from the respondent on 18.7.2021 and towards recovery of the said amount, he issued a cheque bearing No.000021 dated 18.8.2021. The respondent did not take any steps to prosecute the case after issuance of the said statutory notice. However, the respondent proceeded further to fill up another cheque bearing No. 000873 dated 16.8.2022 for the very same amount of Rs.1.80 lakhs.



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6. It is, therefore, clear that the respondent, having failed to utilize the cause of action that arose after the dishonour of the earlier cheque dated 18.8.2021, attempted to resurrect the cause of action with yet another cheque for the very same liability. The complaint that was filed in this case by utilizing the yet another cheque is clearly unsustainable since the cause of action had arisen on the dishonour of the earlier cheque bearing No.000021 dated 18.8.2021 and the respondent never chose to prosecute the case. In the light of the above discussions, the continuation of the proceedings as against the petitioner will result in abuse of process of law, which requires interference of this Court.

7. Accordingly, the proceedings in S.T.C.No.57 of 2023 on the file of the Judicial Magistrate-Fast Track Court No.1, Erode is quashed and the above criminal original petition is allowed. Consequently, the connected Crl.M.Ps. are closed.

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N.ANAND VENKATESH,J

RS

To

1.The Judicial Magistrate-Fast Track
Court No.1, Erode.

2.The Public Prosecutor,
High Court, Madras.

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