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Crl.O.P.No.21839 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.21839 of 2023

And

Crl.M.P.Nos.15111 and 15112 of 2023

Bashir Ahmad Bhat

... Petitioner

Vs.

Dr.A.Najeerul Ameen
Represented by his power agent
E.S.Vijayakumar

... Respondent

Prayer:

Petition filed under Section 482 of Cr.P.C., seeking to call for the records relating in S.T.C.No.2656 of 2023 on the file of the Fast Track Court No.II, Metropolitan Magistrate, Egmore, Allikulam Complex, Chennai – 600 003 and quash the same.

For Petitioner : Mr.Mohamed Qamar Ahmed
For Respondent : No Appearance

O R D E R

This petition has been filed seeking to quash the proceedings in S.T.C.No.2656 of 2023 on the file of the Fast Track Court No.II, Metropolitan Magistrate, Egmore, Allikulam Complex, Chennai.



Crl.O.P.No.21839 of 2023

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2.The respondent has filed a complaint on the ground that the daughter of the petitioner approached the respondent for getting admission in a foreign medical University at Russia. Towards the same, the total fees and other incidental expenses to the tune of Rs.21 Lakhs was payable by the petitioner. Apart from that, the petitioner also promised to pay a sum of Rs.35,000/- towards visa expenses etc. Only a part payment was made to the tune of Rs.12 Lakhs and for the balance amount, cheques were issued in favour of the respondent/ complainant. When the same was presented for collection, it was returned with endorsement 'stop payment' on 02.01.2023. After issuing the statutory notice, the complaint was filed by the respondent against the petitioner for offence under Section 138 of the Negotiable Instruments Act. The proceedings have been put to challenge in this quash petition.

3.Heard the learned counsel for the petitioner. The respondent has been served with notice and the name of the respondent has also been printed in the cause list. There is no representation either in person or through counsel.



CrI.O.P.No.21839 of 2023

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4. On going through the records, it is seen that there is already a dispute between the petitioner and the respondent on the ground that the petitioner was cheated and his daughter after very great difficulty, returned back to India. The petitioner had given a complaint in this regard before the Inspector of Police, Khanyar, Srinagar, Jammu and Kashmir and an F.I.R. was registered in Cr.No.56 of 2022 for offence under Section 420 of I.P.C. In the course of investigation, the Police had written a letter to the Bank to stop the payment of the cheques. Therefore, the stop payment direction was not given by the petitioner and it was given only by the Police. This fact was also specifically mentioned by the petitioner while giving the reply notice for the statutory notice issued by the respondent.

5. In the light of the above facts, the offence under Section 138 of the Negotiable Instruments Act is not made out in this case. In this case, the payment was stopped based on the direction issued by the Police in the course of investigation in Cr.No.56 of 2022 and not due to any direction issued by the petitioner to the Bank.



Crl.O.P.No.21839 of 2023

6.The continuation of the proceedings against the petitioner will

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result in abuse of process of law since the ingredients for instituting the proceedings under Section 138 of the Negotiable Instruments Act has not been fulfilled in this case.

7.Hence, the proceedings in S.T.C.No.2656 of 2023 on the file of the Fast Track Court No.II, Metropolitan Magistrate, Egmore, Allikulam Complex, Chennai, is hereby quashed and this criminal original petition is allowed. Consequently, the connected miscellaneous petitions are closed.

13.02.2024

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Index: Yes/ No

Speaking Order: Yes/ No

NCC: Yes/ No

To

1.The Fast Track Court No.II,
Metropolitan Magistrate, Egmore,
Allikulam Complex,
Chennai – 600 003.

2.The Public Prosecutor,
High Court of Madras,
Chennai 600 104.

4/5



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Crl.O.P.No.21839 of 2023

N.ANAND VENKATESH,J.
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