



Crl.O.P.(MD)No.12885 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 11.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.(MD) No.12885 of 2022
Crl.M.P(MD).Nos.8167 and 8168 of 2022

R.Subramanian

... Petitioner

Vs.

Alagappan

...Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the S.T.C.No.366 of 2018 on the file of the learned Judicial Magisterial, Devakottai and quash the same.

For petitioner
For Respondent

: Mr.A.Shajahan
: Mr.J.Anand Kumar

ORDER

This Criminal Original Petition has been filed to quash the S.T.C.No.366 of 2018 on the file of the learned Judicial Magisterial, Devakottai



WEB COPY

2. The respondent/ defacto complainant lodged a complaint before the learned Judicial Magistrate, Devakottai under Section 138 of Negotiable Instrument Act against the petitioner. The petitioner is the brother-in-law of the defacto complainant. The marriage between the petitioner and the defacto complainant's sister was dissolved. The defacto complainant's sister, while returning from her matrimonial home/petitioner's house, has taken the cheque books in question and ATM Card of the petitioner. When the said cheque was presented by the defacto complainant, the same got dishonoured. Thereafter, the defacto complainant lodged a complaint against the petitioner before the Judicial Magistrate, Devakottai, for the offence under Sections 138 and 142 of Negotiable Instruments Act.

3. The learned counsel for the petitioner submitted that the wife of the de-facto complainant had borrowed some amount from the petitioner, for which, she issued a cheque in favour of the petitioner. When the said cheque was presented, it got dishonored. Therefore, the petitioner lodged a complaint against her and the case was ended in conviction, wherein, the defacto complainant's wife was convicted. All those details clearly established the fact that there is no legally enforceable debt between the



petitioner and the defacto complainant. Hence, he prays to allow this petition.

4. The learned counsel for the respondent submitted that admittedly, the cheque was issued by the petitioner. When the de-facto complainant employed in Pune, the petitioner borrowed a sum of Rs.11,75,000/- from the defacto complainant. For the above said amount, the petitioner has issued two cheques dated 03.10.2017 and 01.10.2017 and when the said cheques were presented, the same were returned as “insufficient funds”. Thereafter, the defacto complainant issued legal notice to the petitioner and registered the said complaint. He further submitted that the offences are triable in nature, which cannot be canvassed before this Court under Section 482 of Cr.P.C. Hence, he prays for dismissal of this petition.

5. At this juncture, the learned counsel for the petitioner submitted that due to the matrimonial dispute, the defacto complainant and her relatives attacked the petitioner. Therefore, he made a complaint before the law enforcing agency. After conducting the investigation, the respondent police filed final report before the learned Judicial Magistrate No.I, Devakottai in C.C.No.70 of 2020 and the same is pending.

6. This Court considered the rival contentions and perused the materials available on record.



Crl.O.P.(MD)No.12885 of 2022

7. A perusal of the records would go to show that the petitioner did not dispute the cheque and his signature available in the cheque. Since disputed questions of facts are involved in this case, it cannot be adjudicated before this Court under Section 482 Cr.P.C. and it can be canvassed only at the time of trial. Accordingly, this Criminal Original Petition is dismissed.

8. The learned counsel appearing for the petitioner would submit that this Court may consider to dispense with the personal appearance of the petitioner before the court below.

9. Taking into consideration the request as made by the learned counsel for the petitioner, the appearance of the petitioner before the trial court is dispensed with except for their appearance for the purpose of receiving the copy of the proceedings u/s 207 Cr.P.C., framing of charges, questioning under Section 313 Cr.P.C. and on the day on which judgment is to be pronounced. However, if for any particular reason, the presence of the petitioner is necessary, the trial court, at its wisdom, shall direct their appearance on those days.

11.03.2024

Index : Yes/No
Internet : Yes/No
tta



Crl.O.P.(MD)No.12885 of 2022

WEB COPY

To

The learned Judicial Magistrate, Devakottai.



WEB COPY



Crl.O.P.(MD)No.12885 of 2022

M.DHANDAPANI. J.

tta

Crl.O.P.(MD)No.12885 of 2022

11.03.2024