



CrI.O.P.(MD).No.11768 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 07.03.2024

CORAM:

THE HONOURABLE Mr. JUSTICE SATHI KUMAR SUKUMARA KURUP

CrI.O.P.(MD).No.11768 of 2023

and

CrI.M.P.(MD).Nos.9294 and 9295 of 2023

K.Kooriselvam

... Petitioner/Respondent

Vs.

S.Dhasarathan

...Respondent/de-facto Complainant

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the case in S.T.C.No. 735 of 2022 filed under Section 138 r/w 142 of Negotiable Instrument Act by the Respondent pending before the learned Judicial Magistrate, Paramakudi, Ramanathapuram District and quash the same as illegal.

For Petitioner : Mr.T.Thirumurugan

For Respondent : Mr.R.Velmurugan



Crl.O.P.(MD).No.11768 of 2023

ORDER

WEB COPY

The learned Counsel for the Petitioner submitted that the Petitioner is arrayed as Accused in STC No.735 of 2022 on the file of the learned Judicial Magistrate, Paramakudi, Ramanathapuram District. The case was filed as a private complaint by the Respondent herein as Complainant. The learned Counsel for the Petitioner submits that the Respondent herein as Complainant gave a compliant to the District Crime Branch, Ramanathapuram, based on which a case was registered in Crime No.43 of 2021 dated 28.12.2021 on the file of the District Crime Branch for offences under Sections 406, 420 IPC. After investigation, the final report was laid before the Court of the learned Judicial Magistrate No.II, Ramanathapuram which is pending till date in C.C.No.76 of 2018. It is the further contention of the learned Counsel for the Petitioner that for the same cause of action, there cannot be a second complaint. On that ground, he seeks to quash the proceedings in S.T.C.No.735 of 2022.

2. It is his further contention that the complaint based on the allegations that the Petitioner obtained money from the Respondent to secure a Government job for his son. Subsequently, in a Panchayat held by the persons belonging to the community of the Petitioner as well as the Respondent, the Respondent had



Crl.O.P.(MD).No.11768 of 2023

forcibly taken blank cheques under pressure and this had been invoked for lodging a complaint under Section 138 of Negotiable Act. It is his submission that for the same cause of action, there cannot be two complaints, one through the Police and another through the private complaint.

3. The learned Counsel for the Respondent also present before this Court and he vehemently objected to the submission of the learned Counsel for the Petitioner stating that the Petitioner herein had admitted his liability before the village elders and voluntarily handed over the cheque which was put to use by the Respondent and complaint was filed by him under Section 138 of Negotiable Instrument Act. The principle of "*double jeopardy*" is not attracted in this case, as he is liable to pay the amount.

4. Therefore, this Court is of the view that there was an illegal contract to secure a Government job, which is against public policy. In such circumstances, the Court of law cannot enforce an illegal contract. On consideration of rival submissions, the submission of the learned Counsel for the Petitioner is found acceptable. On perusal of the contents of the FIR and contents of the Complaint, the contents in FIR and private complaint in STC No.735 of 2022 are one and the same, where FIR is registered for the same offence. A private complaint is



Crl.O.P.(MD).No.11768 of 2023

not maintainable on the same cause of action. Therefore, the principle of double jeopardy is attracted. The submission of the learned counsel for the respondent that double jeopardy is not attracted is found unacceptable and the same is rejected. In the light of the above, STC.No.735 of 2022 is hereby quashed.

5. In view of the above, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

07.03.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr

To

- 1.The Judicial Magistrate,
Paramakudi,
Ramanathapuram District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.O.P.(MD).No.11768 of 2023

SATHI KUMAR SUKUMARA KURUP, J.

Nsr

Crl.O.P.(MD).No.11768 of 2023

07.03.2024