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CrI.O.P.(MD)No.14264 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CrI.O.P.(MD) No.14264 of 2022
and
CrI.M.P.(MD).No.9204 of 2022

Christina Catherine,
C/o. Christ Ministry Trust,
7, Aroma Nagar, Araikkulam Road,
Konganthan Parai,
Munneerpallam,
Tirunelveli District.

... petitioner

Vs.

P.Senthilkumar

...Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records relating to the private complaint in S.T.C.No.28 of 2022 on the file of the Chief Judicial Magistrate Court, Tirunelveli (Special Court for Negotiable Instruments Cases) and quash the same.

For petitioner

: Mr.K.Muthumalai

For R-1

: Mr.Kathirvelu,
Senior Counsel
for Mr.K.Prabhu



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ORDER

This Criminal Original Petition has been filed seeking to quash the private complaint in S.T.C.No.28 of 2022 on the file of the Chief Judicial Magistrate Court, Tirunelveli (Special Court for Negotiable Instruments Cases).

2. The case of the prosecution is that the petitioner has borrowed a sum of Rs.12,00,000/- (Rupees Twelve Lakhs only) on 18.01.2021 and Rs.27,00,000/- (Rupees Twenty Seven Lakhs only) on 25.01.2021, totally a sum of Rs.39,00,000/- (Rupees Thirty Nine Lakhs only) from the respondent and he has repaid only a sum of Rs.3,00,000/- (Rupees Three Lakhs only). It is further alleged that in order to prevent the respondent from lodging a complaint against her, a criminal case was registered against the respondent in Crime No.383 of 2021 before the Munnerpallam Police Station on the inducement of the petitioner. The petitioner has issued a cheque for a sum of Rs.36,00,000/- on 16.10.2021 to the respondent. When the same was presented for collection, it was dishonoured as “insufficient funds”. Due to which, the respondent has sent a legal notice to the petitioner, however, the petitioner neither paid any amount nor replied to the notice. Hence, the respondent has filed a private complaint against the petitioner in S.T.C.No.28 of 2022 on the



file of the Chief Judicial Magistrate Court, Tirunelveli (Special Court for Negotiable Instruments Cases). Challenging the same, the present petition has been filed.

3. The learned counsel appearing for the petitioner would submit that admittedly, the cheque was issued in the name of Christ Ministry Trust. As per the dictum laid down by the Hon'ble Apex Court and this Court, Trust is a juridical person and it squarely falls within the definition of “Company” as defined in proviso to Section 141 of the Negotiable Instruments Act, 1881. So necessarily, the Company has to be arrayed as an accused and without the same, the complaint is not at all maintainable. He further relies upon the judgment of this Court in the case of *Abraham Memorial Educational Trust and Others Vs. C.Suresh Babu* reported in *[2012 (2) MWN (Cr.) (DCC) 161 (Mad.)]*. Hence, he prays for allowing this petition.

4. The learned counsel appearing for the respondent would submit that the petitioner has issued a cheque to the respondent and when the said cheque was presented for collection, the same was dishonoured as “insufficient funds”. Thereafter, the respondent has sent a legal notice to the petitioner. But the petitioner without replying to the same, has



filed this quash petition before this Court and the same is not sustainable one. He relies upon the order of this Court in the case of ***K.Velu and P.Damodharan*** in ***Crl.O.P.No.3431 of 2011*** dated 07.01.2019. The relevant portion in the said order reads as under:

“6. The contention of the petitioner that since the cheque in question was issued for collateral security, for the loan secured by the Trust viz., 'M/s.Sri Venkateswara Educational and Charitable Trust', and non impleading the Trust, as an accused is non est in law, is not acceptable, for the reason that the cheque in question had been issued in the name of the petitioner, for the loan availed. Further, in respect of the Notice issued by the complainant, the petitioner had not paid money nor replied the same. The claim of security cheque on the facts of the above case is unacceptable, which is a matter of fact, which has to be decided only in the trial.”

5. It is seen that the petitioner has borrowed a sum of Rs.39,00,000/- from the respondent and he has repaid Rs.3,00,000/- only. The petitioner has issued a cheque to the respondent for payment of the balance amount. When the said cheque was presented for collection, the same was dishonoured as “insufficient funds”. Thereafter, the respondent



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has sent a legal notice to the petitioner. But the petitioner neither paid any money nor replied to the legal notice. Admittedly, the cheque was issued in the name of Christ Minsitry Trust. Even on persual of the impugned complaint shows that the petitioner name is mentioned as Christian Catherine, Care of Christ Ministry Trust. Since the cheque in question was issued in the name of the Christ Ministry Trust and non-impleading the Trust, as an accused is non-est in law and it is not acceptable. It is further seen that all those points raised before this Court is a triable issue, which cannot be canvassed before this Court and it can be canvassed only at the time of trial.

6. In view of the above discussions, the relief as sought for by the petitioner cannot be acceded by this Court and this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

27.03.2024

Index : Yes/No
Internet : Yes/No
NCC : Yes / No
TSG



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To

- 1.The Chief Judicial Magistrate Court,
Tirunelveli (Special Court for Negotiable Instruments Cases).
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.DHANDAPANI. J.

TSG

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