



Crl.O.P.(MD)No.13243 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.08.2024

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THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.13243 of 2024
and
Crl.M.P(MD)Nos.8137 and 8138 of 2024

Kumaran

... Petitioner

Vs.

M.M.Muthuvenkataraman

... Respondent

PRAYER : Criminal Original Petition filed under Section 528 of BNSS., to call for the records relating to the impugned proceedings in C.C.No.551 of 2023 on the file of the learned Judicial Magistrate, Andipatti and quash the same in respect of the petitioner alone.

For Petitioner : Mr.R.Surya Prakash

ORDER

This Criminal Original Petition has been filed, invoking Section 528 of BNSS., seeking orders, to call for the records relating to the impugned proceedings in C.C.No.551 of 2023 on the file of the learned Judicial Magistrate, Andipatti and quash the same in respect of the petitioner alone.



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2. The respondent has filed a private complaint under Section 200 of Cr.P.C., against the petitioner for the alleged offence under Section 138 of Negotiable Instruments Act.

3. The case of the prosecution is that the petitioner had operated the quarry in a land belonging to the wife of the respondent for which, the petitioner has to pay a sum of Rs.40,00,000/- as outstanding towards lease amount and for that purpose, the petitioner has issued four cheques for Rs.10,00,000/- each in the name of the respondent and out of four cheques, the respondent has presented a cheque in his bank and the same came to be returned for the reason that 'stop payment' made by the petitioner; that the respondent has issued pre-complaint notice, dated 04.07.2023 demanding the petitioner to pay the amount, but the respondent, after receiving the notice, has not chosen to repay the amount.

4. The learned Magistrate, after considering the complaint and taking note of the sworn statement, has taken cognizance of the offence under Section 138 of Negotiable Instruments Act.



5. The main contention of the petitioner is that the petitioner as well as the respondent's wife entered into an agreement to do quarry activities in the land belonging to one Janakiram on 01.07.2021 and as per agreement, the petitioner has started to run the quarry; that subsequently, on 21.12.2022 they have entered into agreement to cancel the earlier agreement, dated 01.07.2024 and as a result, the business transaction between the parties has come to an end, that the petitioner has given notice, directing the respondent and the said Janakiram not to deposit cheques and that the respondent, after receiving the same has deposited and that the cheque was issued for security purpose. The above factual aspects cannot be gone into at this stage and are matter for trial.

6. The Hon'ble Supreme Court in the case of ***State of Haryana and others Vs. Bhajan Lal and others*** reported in ***1992 SCC (Cri) 426*** has enumerated 7 categories of cases, where the power can be exercised under Section 482 of Code of Criminal Procedure and the same are extracted hereunder:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which



we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;



(4) *where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;*

(5) *where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;*

(6) *where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;*

(7) *where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

7. In ***Dr.Dhruvaram Murlidhar Sonar Vs. The State of Maharashtra and others*** reported in **2019 (18) SCC 191**, the Hon'ble Apex Court has



specifically held that exercise of powers under Section 482 Cr.P.C. to quash the proceedings is an exception and not a rule. It is settled law that the inherent jurisdiction under Section 482 Cr.P.C. is wide but at the same time, the same is to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself.

8. The Hon'ble Supreme Court in ***Kaptan Singh Vs. The State of Uttar Pradesh and others*** reported in ***2021 (3) Crimes 247*** has stated that, that Court in catena of decisions has observed that the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial and that question is required to be examined keeping in view, the contents of FIR and *prima facie* materials, if any, requiring no proof and at such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and materials relied on.

9. Except the above factual aspects, the petitioner has not canvassed any other reason or ground to impugn the compliant. Hence, this Court concludes that the Criminal Original Petition is devoid of merits and the same is liable to be dismissed. Accordingly, is dismissed. The petitioner is at liberty to canvass



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all the points now raised before the trial Court. Consequently, connected

Miscellaneous Petitions are closed.

13.08.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

The Judicial Magistrate,
Andipatti.



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K.MURALI SHANKAR,J.

DAS

Order made in
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and
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