



Crl.O.P.(MD)No.15663 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.09.2024

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THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.15663 of 2024

and

Crl.M.P(MD)Nos.9841 and 9842 of 2024

C.Chellammal : Petitioner/Sole Accused

Vs.

Petciammal : Respondent

PRAYER : Criminal Original Petition filed under Section 528 of BNSS., seeking orders, to call for the records relating to the impugned complaint in S.T.C.No.139 of 2024 on the file of the Special Court for Negotiable Instruments Act (Judicial Magistrate Level) Tirunelveli and quash the same as illegal.

For Petitioner : Mr.P.M.Vishnuvarthanan

ORDER

The Criminal Original Petition has been filed, invoking Section 528 BNSS., seeking orders, to call for the records relating to the



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impugned complaint in S.T.C.No.139 of 2024 on the file of the Special Court for Negotiable Instruments Act (Judicial Magistrate Level) Tirunelveli and quash the same as illegal.

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 and the learned Magistrate, after completing the necessary formalities, has taken the case on file in S.T.C.No.139 of 2024 and the same is pending on the file of the Special Court for Negotiable Instruments Act (Judicial Magistrate Level) Tirunelveli.

3. The case of the complainant is that the petitioner has borrowed a sum of Rs.7,00,000/- for her daughter marriage expenses and that when the same was demanded, he has issued a cheque bearing No.050316, dated 23.11.2023 drawn on Federal Bank, Tirunelveli; that the cheque was presented for collection, the same was returned with an endorsement that 'due to payment stopped by drawer'; that the respondent has sent a statutory notice, dated 01.12.2023 demanding payment of the amount and



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that the respondent having received a legal notice on 05.12.2023, he has neither sent any reply nor complied with the notice demand. Hence, the present compliant came to be registered.

4. The main contention of the petitioner is that the respondent has suppressed the main fact that the respondent is younger sister of the petitioner; that there existed dispute with regard to the ancestral properties; that the respondent, by misusing the cheque of the petitioner, has filed the present complaint; that though the petitioner has sent a notice on 20.12.2023, the respondent has not issued any reply notice disputing the averments in the reply notice and that the petitioner has already lodged the complaint for missing of some cash and cheques and one of the cheque came to be used by the respondent for filing the above case.

5. The above aspects/points, by no stretch of imagination can be considered as reason or ground to impugn the private complaint. Whether the cheque was stolen, whether the stolen cheque was misused by the respondent are the aspects that cannot be gone into, in the present



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proceedings and are matter for trial. Except the above aspects, the learned counsel for the petitioner has not canvassed any other reason or ground to impugn the complaint.

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



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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;



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(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



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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/complaint 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/complaint and materials relied on.

9. A cursory perusal of the complaint and the documents filed along with the complaint would make it clear that there existed a *prima facie* case to proceed against the petitioner.



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10. Considering the above, this Court is of the clear view that this is not a fit case to quash the complaint against the petitioners. Hence, this Court concludes that the Criminal Original Petition is devoid of merits and the same is liable to be dismissed.

12. In the result, the Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

19.09.2024

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

1.The Special Judge, Special Court for
Negotiable Instruments Act
(Judicial Magistrate Level) Tirunelveli.



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K.MURALI SHANKAR,J.

das

Order made in
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