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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.09.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.15995 of 2024
and
Crl.M.P.(MD)Nos.10077 and 10078 of 2024

Veerajakkaya ... Petitioner

Vs.

Arjunpandian ... Respondent

PRAYER : Criminal Original Petition filed under Section 528 B.N.S.S., to call for the records relating to S.T.C.No.313 of 2023 on the file of the Judicial Magistrate, Bodinayakanur, Theni District and quash the same.

For Petitioner : Mr.M.A.M.Raja

ORDER

The Criminal Original Petition has been filed, invoking Section 528 B.N.S.S., seeking orders to quash the private complaint in S.T.C.No. 313 of 2023 pending on the file of the Judicial Magistrate, Bodinayakanur, Theni District.

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2. The respondent has filed a private complaint against the petitioner under Section 200 Cr.P.C. for the alleged offence under Section 138 of Negotiable Instruments Act and the learned Magistrate, after completing necessary formalities, has taken the case on file in S.T.C.No.313 of 2023.

3. The case of the respondent is that the petitioner had borrowed a sum of Rs.5,00,000/- from the respondent on 18.12.2022 and promised to repay the amount within a month and for that, the petitioner had issued a cheque dated 21.01.2023 for Rs.5,00,000/-, that when the respondent has presented the cheque for collection on 21.01.2023, the same was dishonored with reason “Funds Insufficient”, that the respondent has then sent a statutory notice dated 23.01.2023 to the petitioner demanding repayment of the amount covered by the cheque, that the petitioner has sent a reply notice on 18.02.2023 and that thereafter the respondent has filed a private complaint for the offence under Section 138 of Negotiable Instruments Act.

4. The learned counsel appearing for the petitioner would submit

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that the petitioner entered into an agreement for purchasing a car with one Vedamani on 22.02.2020 and issued a cheque in favour of the said Vedamani and subsequently he has paid the entire amount but the said Vedamani has set up his henchman/respondent herein and filed the false complaint. He would further submit that after receiving the respondent's statutory notice, the petitioner has sent a reply notice and that after lodging of the present complaint, the petitioner has preferred a police complaint on 08.02.2024 against the respondent.

5. The main contention of the petitioner is that there was no transaction between the petitioner and the respondent but that cannot be gone into, in the present stage and it is matter for trial. The petitioner can very well produce the above materials available with him to prove that there existed no liability for payment towards the respondent and that the case canvassed by the respondent is false. Except the above, the petitioner has not canvassed any other reason or ground to impugn the private complaint.

6. The Hon'ble Supreme Court in the case of ***State of Haryana***

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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;*

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(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

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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.

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

10. Considering the above and also taking note of the fact that this is not a fit case to quash the charge sheet against the petitioner, this Court is not inclined to grant the relief claimed.

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11. In the result, this Criminal Original Petition stands dismissed. Consequently, connected Miscellaneous Petitions are closed.

24.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To
1.The Judicial Magistrate,
Bodinayakanur, Theni District.

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K.MURALI SHANKAR,J.

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