



Crl.O.P.(MD)No.17604 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.10.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.17604 of 2024
and Crl.M.P.(MD)Nos.10944 & 10945 of 2024

V.Dasarathan

... Petitioner

Vs.

S.Gurunathan

... Respondent

PRAYER : Criminal Original Petition filed under Section 528 of BNSS, to call for the records in C.C.No.2148 of 2019 filed under Section 138 of Negotiable Instruments Act on the file of the Judicial Magistrate VI, Trichy and quash the same.

For Petitioner : Mr.C.Suresh Kannan

ORDER

This criminal original petition has been filed seeking orders to quash the proceedings in C.C.No.2148 of 2019 filed under Section 138 of Negotiable Instruments Act on the file of the Judicial Magistrate VI, Trichy.



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2.It is evident from the records that the respondent has filed a private complaint under Section 200 Cr.P.C., for the offence punishable under Section 138 of the Negotiable Instruments Act and that the learned Magistrate, after completing necessary requirements, has taken the case on file in C.C.No.2148 of 2019.

3.The case of the respondent is that the petitioner insisted the respondent to invest money in a dairy farm and believing his words, the respondent invested huge amount, thereafter, the petitioner never paid interest to him and when he asked about the returning of the amount, he has issued a cheque for a sum of Rs.40,00,000/- dated 11.07.2019 and the same was presented for collection, it was returned with an endorsement, “payment stopped” and that the respondent has sent legal notice and since the petitioner has not sent any reply, the respondent was constrained to file the present complaint.

4.The main contention of the petitioner is that he has approached one Ramesh for financial assistance and at that time, he gave the said cheque, that too for security purpose.



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5.The Hon'ble Supreme Court of India has settled this issue that even if the cheque was issued for security purpose, the offence under Section 138 of the Negotiable Instruments Act is attracted. Except the above, the petitioner has not canvassed any other reasons/grounds to impugn the charge sheet.

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



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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



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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/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 private complaint and the documents filed along with the complaint would make it clear that there existed a



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prima facie case to proceed against the petitioner. The grounds raised/canvassed by the petitioner, by no stretch of imagination, can be considered as reasons/grounds to quash the proceedings and the same are matter for trial. Therefore, this Court concludes that the petition is devoid of merit and the same is liable to be dismissed.

10.In the result, this criminal original petition is dismissed. Consequently, connected miscellaneous petitions are closed. Since the case in C.C.No.2148 of 2019 is pending from the year 2019, the learend Judicial Magistrate VI, Trichy is directed to complete the trial and dispose the case, within a period of three months from the date of receipt of a copy of this order.

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

The Judicial Magistrate VI, Trichy



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K.MURALI SHANKAR,J.

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