



Crl.O.P.(MD)No.20045 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.11.2024

CORAM

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.(MD)No.20045 of 2024
and Crl.M.P(MD).Nos.12374 and 12375 of 2024

S.Selva Raju

... Petitioner

Vs.

V.Gnana Thiraviam

... Respondent

PRAYER : Criminal Original Petition filed under Section 528 of BNSS, 2023, to call for the records pertaining to the private complaint in STC.No.631 of 2023 on the file of the learned Judicial Magistrate Court NO.I, Dindigul and quash the same as illegal.

For Petitioner : Mr.K.Althaf Sheriff
for M/s.Ajmal Associates

ORDER

The petitioner, who is accused and facing trial for the offence under Section 138 of Negotiable Instrument Act in STC.No.631 of 2023 on a complaint filed by the respondent, had filed this quash petition.



Crl.O.P.(MD)No.20045 of 2024

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2. The primary ground on which the petitioner had projected this case is that the respondent /complainant had also filed a civil suit in O.S.No.26 of 2024 before the Additional District Court, Dindigul, for the same cause of action and in which, he submits that the cheque was given as security for a business transaction. In the present case, before the Magistrate Court, it is projected as if the petitioner in discharging of his liability had issued the cheque. When the complainant had taken two diametric opposite stand one before the Criminal Court and another before the civil Court, in view of the same, it is proved that the cheque was not issued in discharge of liability. Further, as per Section 138 of Negotiable Instrumnt Act, a cheque has been issued in discharge of liability and thereafter only, the case has been proceeded against the drawer of the cheque. He further submitted that proceeding two cases for the same cause of action would amount to double jeopardy, which would be against Article 22 of the Constitution of India.

2. It is seen that the petitioner is not seriously disputing the issuance of cheque to the respondent/complainant. His only defence is



Crl.O.P.(MD)No.20045 of 2024

that the respondent/ complainant has taken two stand one before the criminal Court as if the cheque was issued for discharge of liability and other before the civil Court that the cheque was issued for security and the further contention is that cheque has been materially altered, which is the matter of fact, which has to be decided during trial and not in the quash petition. In view of the same, this Court is not inclined to entertain this petition. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

NCC : Yes / No
Index : Yes / No
Rmk

19.11.2024

To

- 1.The Judicial Magistrate Court NO.I, Dindigul
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.O.P.(MD)No.20045 of 2024

M.NIRMAL KUMAR, J.
Rmk

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