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Crl.O.P.No.2635 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.2635 of 2025
and Crl.M.P.No.1700 of 2025

S.Manohar

... Petitioner

Vs

M.Velayutham

... Respondent

PRAYER: Criminal Original Petition is filed under 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 to set aside the order dated 04.12.2024 made in Crl.M.P.No.3935 of 2024 in S.T.C.No.986 of 2021 passed by the Learned XV Court of Small Causes, Chennai.

For Petitioner : Mr.S.Sathish Rajan

ORDER

This petition has been filed to set aside the order dated 04.12.2024 made in Crl.M.P.No.3935 of 2024 in S.T.C.No.986 of 2021 passed by the Learned XV Court of Small Causes, Chennai, thereby dismissing the application filed by the petitioner under Section 91 Cr.P.C.



2. Heard the learned counsel on either side and perused the materials placed on record.

3. The petitioner is an accused in the complaint lodged by the respondent in S.T.C.No.986 of 2021, on the file of the XV Court of Small Causes, Chennai alleging that the petitioner borrowed huge sum and in order to return the same, issued a cheque for a sum of Rs.18,70,000/- towards part settlement of the loan borrowed by him. It was presented for collection and got dishonoured. After issuance of statutory notice as contemplated under Section 138 of NI Act, filed complaint.

4. After examination of witnesses, the petitioner filed an application under Section 91 Cr.P.C to produce the bank statement of the respondent, on the ground that he had no financial source to lend such a huge amount as loan to the petitioner. Further, he is working as a Manager in a Hotel and as such, he had no source of such income to lend huge amount of loan to the petitioner.

5. The learned counsel for the petitioner relied upon the Judgment of the Hon'ble Supreme Court of India reported in **2022 6 SCC 735** in the case of



Tedhi Singh Vs Narayan Dass Mahant, in which the Hon'ble Supreme Court

of India held that the complainant need not show in the first instance that he had the capacity to lend loan, since Section 138 of NI Act is not a civil dispute. The complaint has been filed to punish the petitioner. When the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent, that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity. However, the accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable which he can do by producing independent materials. It is also open to him to establish the very same aspect by pointing to the materials produced by himself.

6. A perusal of records revealed that the petitioner was also examined as defence witness and however, he did not produce any material to substantiate the said ground. That apart, the case is posted for arguments, after closing evidence. Therefore, the Trial Court had rightly dismissed the petition and this Court finds no infirmity or illegality in the order dated 04.12.2024 made in Crl.M.P.No.3935 of 2024 in S.T.C.No.986 of 2021 passed by the



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Learned XV Court of Small Causes, Chennai and this petition is devoid of merits and is liable to be dismissed. The Trial Court is directed to dispose of the complaint in S.T.C.No.986 of 2021, within a period of twelve weeks from the date of receipt of a copy of this order.

7. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous petition is closed.

03.02.2025
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Internet: Yes
Index: Yes/No
Speaking/Non speaking order

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To

1. The XV Court of Small Causes, Chennai.
2. The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN. J.

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