IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2025

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.Nos.7536 and 13710 of 2023
and
Crl.M.P.Nos.4811, 4814, 8416 and 8417 of 2023

1. P.Jagatha
2. S.Parthiban ... Petitioners in both Crl.O.Ps.

Vs

V.Vasugi ... Respondents in both Crl.Ps.

Criminal Original Petitions filed under Section 482 of Cr.P.C., to call for the records in S.T.C.No.486 of 2022 & 491 of 2022 on the file of the Special Judicial Magistrate, Fast Track Court I, Erode District to quash the entire proceedings.

For Petitioners in both Crl.O.Ps : Mr.P.M.Jayachandran

For Respondent in both Crl.O.Ps : No appearance

COMMON ORDER

These Criminal Original Petitions have been filed to quash the proceedings in S.T.C.No.486 of 2022 & 491 of 2022 on the file of the Special Judicial Magistrate, Fast Track Court I, Erode District.

2. The petitioners are the accused in the complaint lodged by the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act, alleging that the petitioners on 15.07.2021, borrowed a sum of Rs.5,00,000/- for their family and business needs. They also agreed to repay the same within a period of six months along with interest at the rate of 2% per month. In order to discharge the said liability, they had jointly issued post dated cheques dated 15.07.2022 and 30.07.2022 for Rs.3,00,000/- and Rs.2,00,000/- respectively. Both the cheques were presented for collection and the same were returned dishonoured for the reasons 'funds insufficient' and 'payments stopped by the drawer'. After causing a legal notice, the respondent lodged a complaint. The petitioners are husband and wife.

3. The specific case of the petitioners is that after borrowing the loan on 04.07.2019, they had repaid the entire loan amount. As the respondent failed to return the cheques issued by the petitioners inspite of several efforts, the petitioners issued a letter to their banker dated 27.08.2020, thereby informing that the loan amount has been repaid and therefore, if the cheques were presented by the respondent, it should not be entertained. This Notice was also duly received by the petitioners' banker on 28.08.2020. The petitioners also produced the statement of accounts of their banker. After considering the above, this Court quashed both the complaints by order dated 15.03.2024. Aggrieved by the same, the respondent preferred an appeal before the Hon'ble Supreme Court of India in Crl.A.Nos.936-937 of 2025. The Hon'ble Supreme Court of India by order dated 24.02.2025 allowed the said appeals and set aside the order passed by this Court and remanded back to this Court for fresh disposal. The Hon'ble Supreme Court of India also issued specific directions to this Court to go into the following issues:-

> *"(i) Whether the complaint under Section 138 of the Negotiable Instruments Act, 1881 filed by the appellant is an abuse of process of law and, if so, whether the High*

Court was justified in quashing such complaint proceedings?

(ii) Whether the appellant actually advanced a loan of Rs.5 lakhs to the respondents who gave the cheques to discharge their debt liability?

(iii) Whether the respondents had paid a part of the loan amount, if so, what is the proof thereof, and whether they are liable to pay the alleged balance amount?"

4. Now, even after receipt of notice, the respondent though engaged counsel, no one has entered appearance today either in person or through counsel.

5. On perusal of the records, it is revealed that as directed by the Hon'ble Supreme Court of India, the first issue that has to be answered is whether the complaint under Section 138 of the Negotiable Instruments Act filed by the respondent is an abuse of process of law, and if so, whether this Court was justified in quashing such complaint proceedings?

6. The second issue that has to be answered is whether or not the respondent actually advanced a loan of Rs.5 lakhs to the petitioners, who gave cheques in order to discharge their liability? On perusal of the records, admittedly, the petitioners borrowed a sum of Rs.5,00,000/- from the respondent and on the date of borrowal itself, they issued post dated cheques for Rs.3,00,000/- and Rs.2,00,000/- respectively in order to repay the loan amount. Therefore, it is beyond any doubt that the respondent had advanced a loan amount of Rs.5,00,000/-.

7. Insofar as the first issue is concerned, a perusal of the records including the statement of accounts by the petitioners, reveals that from 01.07.2019 to 31.07.2019, some payments were made by the petitioners to the credit of the respondent. Even if it is assumed that the aforesaid payment does not pertain to the loan claimed to be borrowed by the petitioners on 15.07.2021 as claimed by the respondent, it must also be taken note that much earlier to the date of borrowal, the petitioners gave letter dated 27.08.2020 to the banker, viz., the State Bank of India, Srirangapalayam Branch, Salem to stop payment of both cheques bearing Nos.423983 and

424000. Therefore, it is clear that in order to present the cheques for payment, the respondent misrepresented the date of borrowal as 15.07.2021, and changed the dates in the cheques as 15.07.2022 and 30.07.2022 and presented them for collection. One of the cheque was returned as funds insufficient and another cheque was returned for the reason that payment stopped by the drawer.

8. Further, on perusal of the statement of bank accounts of the petitioners from 01.07.2019 to 31.12.2019, the entire loan amount has been repaid by the petitioners to the respondent on various dates. Therefore, the complaints lodged by the respondent is nothing but clear abuse of process of law.

9. The third issue pertains as to whether the petitioners had paid a part of the loan amount, if so, what is the proof thereof, and whether they are liable to pay the alleged balance amount. As stated supra, if the petitioners borrowed loan on 15.07.2021 and issued the cheques dated 15.07.2022 and 30.07.2022, they could not have issued stop payment letter

to their banker dated 27.08.2020. Therefore, it is apparent that the respondent conveniently changed the date of cheques and presented them for collection.

10. On perusal of the letter issued by the petitioners dated 27.08.2020, it is revealed that it was duly addressed to their Banker stating that the cheques bearing Nos.423983 and 424000 were issued to the respondent for security purpose and the entire loan amount has been repaid by them. Therefore, if the cheques are presented for collection do not encash the same and thereby, stop payment. Hence, it is crystal clear that the petitioners had repaid the entire loan amount and issued stop payment letter to their Banker. Even if it is assumed that the petitioners have obtained another loan from the respondent on 15.07.2021 as claimed by the respondent, the respondent ought to have obtained fresh cheques for such loan instead of the cheques, which have been issued earlier. Accordingly, the complaints lodged by the respondent are nothing but clear abuse of process of law and both the complaints cannot be sustained and liable to be set aside.

11. In view of the above, this Criminal Original Petitions are allowed and the impugned proceedings in S.T.C.No.486 of 2022 & 491 of 2022 on the file of the Special Judicial Magistrate, Fast Track Court I, Erode District are hereby quashed. Consequently, the connected Miscellaneous Petitions are closed.

04.04.2025

Index:Yes/No
Neutral Citation/Yes/No
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To

1. The Special Judicial Magistrate,
   Fast Track Court I, Erode District.

2. The Public Prosecutor,
   High Court, Madras.

G.K.ILANTHIRAIYAN, J.

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