IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2025

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.4139 of 2024
and
Crl.M.P.No.3068 of 2024

Dr.L.Palaniappan ... Petitioner

Vs

1. State Rep. by:
   The Sub Inspector of Police,
   Chidambaram Town Police Station,
   Cuddalore District.
   Crime No.321 of 2023

2. N.Balasubramaniam ... Respondents

Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in FIR No.321 of 2023 dated 08.10.2023 pending on the file of the first respondent herein and quash the same by allowing this Criminal Original Petition.

For Petitioner : Mr.R.Marudhachalamurthy

For Respondents : Mr.R.Vinothraja,
Government Advocate (Crl.Side) (for R1)
No appearance (for R2)

ORDER

This petition has been filed to quash the First Information Report in Crime No.321 of 2023 on the file of the first respondent.

2. The case of the prosecution is that the second respondent was working as a Data Operator and the petitioner was working as a Physics Professor. The second respondent alleges that from March 2022 onwards, he borrowed a sum of Rs.15,00,000/- for 24% interest on several occasions from the petitioner for his son's medical expenses. The second respondent issued a postdated cheque in favour of the petitioner on receipt of the above-said amount. Further, it is alleged that the second respondent repaid a sum of Rs.5,19,500/- with interest; however, he was unable to repay the remaining principal and interest, and in view of the delay, the petitioner claimed exorbitant interest from him and also threatened him with dire consequences. Hence, the complaint.

3. The learned counsel for the petitioner would submit that the second respondent approached the petitioner for financial assistance, and

the same was extended to the tune of Rs.18,23,500/-. However, the second respondent had repaid only a sum of Rs.7,53,600/- on various dates. Though the petitioner made several demands, the second respondent failed to repay the said amount. However, the second respondent issued a cheque for the balance amount. The said cheque was presented for collection; it was dishonoured for the reason of stop payment by the second respondent. Thereafter, the petitioner caused notice to initiate proceedings under Section 138 of the Negotiable Instruments Act and filed a complaint before the learned Judicial Magistrate No.1, Chidambaram. After knowing the said proceedings initiated by the petitioner, the second respondent, only to escape from the clutches of law, lodged the present complaint, as if the petitioner threatened him with dire consequences and also sought exorbitant interest from the second respondent. Therefore, he prayed to quash the First Information Report.

4. Though notice has been served, the second respondent has not entered appearance, either in person or through Counsel. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) appearing for the first respondent perused the materials available on record.

5. In this regard, the learned counsel appearing for the petitioner cited a judgement of this Court passed in a batch of cases in ***Crl.O.P.No.4877 of 2018*** dated 26.06.2018, in the case of ***"T.Karthikeyan and others Vs. The State rep by its Inspector of Police"***, which held as follows:-

> *"10. The object of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, is to prohibit the charging of exorbitant interest by any person and matters incidental thereto. The scheme of the Act is to regulate and control collection of money in the name of daily vatti, hours vatti, kandhu vatti, meter vatti, thandal etc. As per the provisions of the Tamil Nadu Money Lenders Act, 1957, a money lender is a person whose main or subsidiary occupation is the business of advancing and realising loans. Further, an advance made on basis of a negotiable instrument exceeding Rs.10,000/-, will not fall under the definition of a loan. Therefore, a money lender, who makes an advance, on basis of a negotiable instrument exceeding Rs.10,000/- is not a person referred to under Section 3 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003. In other words, the debtor cannot lawfully complain of a demand of*

exorbitant interest, when a money lender advances a loan on the basis of negotiable instrument exceeding Rs.10,000/-.

11. As per the provisions of the Tamil Nadu Money Lenders Act, a money lender is a person, whose main or subsidiary occupation is a business of advancing and releasing loan. In the instant case, the petitioners main occupation was transport business and it is nobody's case that their main and subsidiary business was money lending. Therefore, the term 'person' referred to in Section 3 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 and the term 'money lender' referred to therein are not applicable to the petitioners herein. Incidentally, the petitioners herein had produced various copies of their transport business pertaining to Port Trust Licence, Coir Board License, Export and Import License, Income Tax Returns etc., and established that their main business was not money lending. As such, the FIR implicating the petitioners for offences under Sections 3 and 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 is prima facie not made out.

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13. The basis of the complaint is that the petitioners herein had demanded exorbitant interest and it is in this connection that they had allegedly indulged in various criminal activities. When the offence under the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 has not been made out, what remains is a mere civil dispute between the petitioners and the defacto complainant since the amount borrowed as well as the non repayment of the same is not under dispute. It would not be out of place to mention here that under Section 51 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, it is mandatory that the debtor to deposit the loan amount together with interest at the rate fixed by the Government under Section 7 of the Act into the jurisdictional Court before presentation of the petition for recording satisfaction of the loan. This proposition has been reiterated in Indiabulls Financial Services Ltd., Vs. Jubilee Plots and Housing Private Limited reported in 2010 (2) LW 375

> *"24.In the considered opinion of this Court, the word 'may' used under Section 5(1) of the Act would imply the option given to a debtor to approach the court with a petition to refer full or part satisfaction of the loan with interest. Once a debtor exercises his option to approach the court for such a*

purpose, a debtor, who presents a petition, is bound to deposit the money in respect of the loan received by him together with interest. Therefore, the expression 'may' employed under Section 5(1) does not mean by any stretch of imagination that deposit of money while presenting a petition is always at the option of a debtor. If such an import is given to the aforesaid provision of law, no debtor would be inclined to deposit the loan amount with interest to get a relief within the time frame fixed under Section 5(2) of the Act. Consequently, it would be a mockery if the debtor, who has not chosen to show his bona-fides by depositing the money due in respect of the loan with interest, is permitted to seek for a remedy by just filing a petition. The provision under Section 5(2) of the Act speaks of an inquiry and passing of an order recording the satisfaction of the loan and interest therefore in full or part. If the amount due in respect of the loan with interest therein is not deposited as contemplated under Section 5(1) of the Act, the court may not be in a position to record in full or part satisfaction of the loan."

6. The above judgment is squarely applicable to the case on hand. In order to escape from the clutches of proceedings for the offence punishable under Section 138 of the Negotiable Instruments Act, the present complaint has been lodged against the petitioner. Therefore, the entire complaint has been vitiated and it is a clear abuse of the process of law. Therefore, the complaint has no legs to stand further and is liable to be quashed.

7. Accordingly, this Criminal Original Petition stands allowed and the FIR in Crime No.321 of 2023, on the file of the first respondent is quashed. Consequently, connected miscellaneous petition is closed.

16.04.2025

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

1. The Sub Inspector of Police,
   Chidambaram Town Police Station,
   Cuddalore District.

2. The Public Prosecutor,
   High Court of Madras.

G.K.ILANTHIRAIYAN, J.

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