



Crl.O.P.No.5545 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2025

CORAM:

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

Crl.O.P.No.5545 of 2025
and Crl.M.P.No.3586 & 3587 of 2025

G.Srinivasan

... Petitioner

Vs.

B.Ashok Kumar

... Respondent

PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for all the records in C.C.No.457 of 2023, on the file of the learned Judicial Magistrate No.II, Tambaram, quash the proceedings therein.

For Petitioner : Mr.C.D.Dhanasekaran

For Respondent : Mr.M.Soundar Vijay Arulram

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.457 of 2023 pending on the file of the learned Judicial Magistrate No.II, Tambaram, thereby taken cognizance for the offences under Sections 138 & 142 of the Negotiable Instruments Act (hereinafter referred to as “the NI Act”).



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2. The petitioner is an accused in the complaint lodged by the respondent for the offence punishable under Section 138 of the NI Act, alleging that the petitioner had borrowed a sum of Rs.10,82,000/- on 17.08.2021 for his urgent family and business needs. The petitioner also promised to repay the same within a period of five months. In order to return the said amount, the petitioner issued a cheque for the sum of Rs.10,00,000/- dated 28.08.2023 and for the rest of the amount the petitioner had issued three cheques for a sum of Rs.30,000/-, Rs.27,500/- and Rs.25,000/-. When those cheques were presented for collection, the same were returned dishonour for the reason that “funds insufficient” and “other reasons”. After causing legal notice, the respondent filed the complaint and the same has been taken cognizance by the trial Court in C.C.No.457 of 2023.

3. The learned counsel appearing for the petitioner submitted that the petitioner had borrowed a sum of Rs.4,00,000/- from the respondent during the year 2018 & 2019 on various occasions, and on the date of borrowal of loan, the petitioner had issued unfilled signed cheques and other documents to the respondent. Thereafter, the petitioner settled all the dues and after repaying of loan amount, the documents



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were not returned to the petitioner. Utilizing the said circumstances, the

respondent presented the cheque, that too after merging of the bank viz.,

Andhra Bank with Union Bank and the same was returned for the reason that the old MICR merged with Union Bank. It was duly explained by the petitioner by the reply notice dated 23.09.2023. Further the petitioner also filed a suit, for return of documents which were executed at the time of borrowal, in O.S.No.242 of 2023 on the file of the District Munsif Court, Lalgudi on 11.08.2023, for permanent injunction and mandatory injunction. In support of his contention, he also relied upon the judgment of the Hon'ble Alahabad High Court in the case of **Archana Singh Gautam Vs. State of U.P and anr.**, Neutral Citation No.2024:AHC:102434, which held that the cheque in question which was issued from the account maintained in erstwhile Allahabad Bank after its merger with Indian Bank, was not the valid cheque on the date of presentation before the Indian Bank as the cheque must be presented to the bank during its validity. Therefore, the dishonouring the same will not attract the liability under Section 138 of the NI Act.

4. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

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5. On perusal of the reply notice dated 23.09.2023 issued by the petitioner, he categorically stated that the alleged cheques were not issued on 23.08.2023 and the same were issued for security purpose at the time of borrowal of loan for a sum of Rs.4,00,000/-. The petitioner also executed blank signed cheque, non judicial stamp papers, promissory notes etc., in favour of the respondent. Further stated that the petitioner settled all the entire loan.

6. It is seen that the alleged chqueue was drawn at Andhra Bank. Subsequently, the said Andhra Bank merged with Union Bank of India on 01.04.2020. Therefore, whatever cheque that stands in the name of Andhra Bank is valid upto the amalgamation viz., only upto 30.09.2021. However, the petitioner did not take any steps for return of those documents, after repayment of the entire loan. Only on receipt of the statutory notice issued under Section 138 of the NI Act by the respondent, the petitioner woke up and issued reply notice and also filed suit for recovery of documents which were allegedly executed by the petitioner at the time of borrowal of loan.



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7. Thus it is clear that the petitioner after knowing the fact that

the Andhra Bank was merged with Union Bank of India as early as on 01.04.2020, had issued the alleged cheque for a sum of Rs.10,00,000/- for the amount borrowed on 17.08.2021. If at all the petitioner settled the entire loan amount, definitely he would have taken steps to get back all those documents which were given as security at the time of borrowal of loan from the respondent. It would show that after expiry of the cheque, in order to cheat the respondent the petitioner issued the cheque that too after amalgamation of the Andhra Bank with Union Bank of India, towards the repayment of the loan borrowed by him. Further these ground can be considered only during trial by submitting evidence before the trial Court. Therefore, the judgment cited by the learned counsel appearing for the petitioner is not applicable to the case on hand. This Court finds no ground to quash the entire proceedings and the present petition is liable to be dismissed. However, the trial Court viz., learned Judicial Magistrate No.II, Tambaram is directed to dispose the case in C.C.No.457 of 2023 within a period of three months from the date of receipt of a copy of this order. The petitioner is at liberty to raise all the grounds before the trial Court, during the trial.



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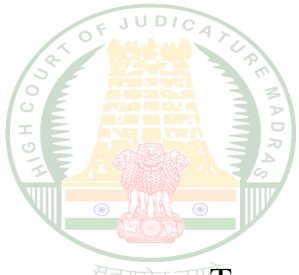
8. Accordingly, the Criminal Original Petition stands

dismissed. Consequently, connected miscellaneous petitions are closed.

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Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order

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To
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1. The Judicial Magistrate No.II,
Tambaram



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G.K.ILANTHIRAIYAN, J.

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