



Crl.O.P.No.7640 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2025

CORAM:

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

Crl.O.P.No.7640 of 2023
and Crl.M.P.Nos.4870 and 4871 of 2023

G.Jayasankar

... Petitioner

Vs

N.Mathivanan

... Respondent

Prayer : Criminal Original Petition has been filed under Section 528 of BNSS Act, 2023/Section 482 of Cr.P.C., pleaded to call for the records of the Private Complaint in STC.1749 of 2019 on the file of the Judicial Magistrate No.II, Puducherry and quash the same.

For Petitioner : Mr.V.P.Sengottuvel,
Senior Counsel
for Mr.S.Natarajan
For Respondent : No appearance

ORDER

This Criminal Original Petition has been filed to quash the private complaint in STC.1749 of 2019 on the file of the Judicial Magistrate No.II, Puducherry.



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2. Heard the learned counsel for the petitioner and perused the materials available on record. Though notice served on the respondent and the name has been printed in the cause list, today, no one appeared on behalf of the respondent before this Court in person or through pleader.

3. The case of the respondent is that the petitioner approached the respondent to purchase a house property for a sum of Rs.35 Lakhs. To that extent, they had entered into an agreement and received a sum of Rs.30 Lakhs as an advance. The balance sale consideration to be paid by the respondent is within a period of nine months from the date of agreement for sale. Even after the agreement for sale, the petitioner received a sum of Rs.2 Lakhs and further sum of Rs.1,50,000/-. Even then, the petitioner failed to come forward to execute the sale deed in favour of the respondent. Therefore, in the Panchayat, the petitioner agreed to return the advance amount with interest to the tune of Rs.45,00,000/-, within a period of six months and also issued post dated cheques. However, the petitioner failed to return the entire amount. On the assurance given by the petitioner, the respondent represented



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all the three cheques for collection. All the three cheques were returned dishonoured for the reason “Signature Differs”. After causing legal notice, the respondent filed a complaint.

4. The learned Senior Counsel for the petitioner would submit that admittedly, the petitioner borrowed loan and for security purpose, he had executed an agreement for sale in respect of the house property. The cheque was issued for security purpose. Even according to the crime, the respondent ought to have paid the balance sale consideration within a period of nine months. However, the respondent failed to come forward to pay the balance sale consideration. The cheques were issued as security and the same were presented for collection. At the same time, the respondent also filed a suit for specific performance and it is pending in O.S.No.196 of 2022 on the file of the Principal District Judge, Puducherry. Therefore, for the very same transaction now, two proceedings are pending.

5. Further, even according to the respondent, he had paid only a sum of Rs.30 Lakhs as advance to purchase the property and entered into an

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agreement. In order to execute the agreement for sale, he filed a suit for specific performance and it is pending. Therefore, cheques which were presented for collection were not issued for any legally enforceable debt.

6. It is relevant to extract the provision under Section 138 of Negotiable Instruments Act as follows:-

“ 138. Dishonour of cheque for insufficiency, etc., of funds in the account.—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for 4[a term which may be extended to two years’], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to



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the drawer of the cheque, 5[within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.”

7. Thus, it is clear that when the cheques were not issued for any legally enforceable debt, the offence under Section 138 of Negotiable Instrument Act is not at all attracted and the entire complaint initiated as against the petitioner is nothing but clear abuse of process of law and is liable to be quashed.

8. Accordingly, the private complaint in STC.1749 of 2019 on the file of the Judicial Magistrate No.II, Puducherry, is hereby quashed. This Criminal Original Petition is allowed. Consequently, connected Miscellaneous petitions are closed.

28.03.2025

Index: Yes/No
Speaking Order: Yes/No
mn

G.K.ILANTHIRAIYAN,J.



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To

The Judicial Magistrate No.II,
Puducherry.

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