



Crl.O.P.No.13750 of 2025

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2025

CORAM:

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

Crl.O.P.No. 13750 of 2025

and

Crl.M.P.No.9184 of 2025

K.C.Paneer Selvam

.... Petitioner

Vs

S.Daniel Asirvatham

.... Respondent

PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records in STC No.1275 of 2024 on the file of the Judicial Magistrate No.1, Villupuram and quash the charge as against the petitioner / accused herein.

For Petitioner : Mr.R.C.Paul Kanagaraj



Crl.O.P.No.13750 of 2025

ORDER

WEB COPY

This Criminal Original Petition has been filed to quash the proceedings in STC No.1275 of 2024 on the file of the Judicial Magistrate No.1, Villupuram.

2. The petitioner is the sole accused in a private complaint filed by the respondent for the offence under Section 138 of the Negotiable Instruments Act, 1881. The case of the complainant is that the petitioner had allegedly borrowed a sum of Rs.7,34,000/- from the respondent on 25.04.2023, with an assurance to repay the said amount within a period of six months. Towards discharge of the said liability, the petitioner is stated to have issued a cheque for Rs.7,34,000/-. On presentation, the said cheque was returned unpaid with the endorsement “Funds Insufficient”. Subsequently, after issuing a statutory legal notice, the respondent initiated proceedings under Section 138 of the Negotiable Instruments Act, and the same has been taken on file as S.T.C. No.1275 of 2024 by the Judicial Magistrate No.1, Villupuram.

3. The learned counsel appearing for the petitioner submitted that



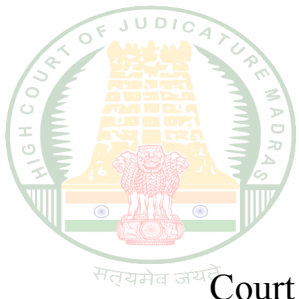
Crl.O.P.No.13750 of 2025

WEB COPY

the present complaint is a clear abuse of the process of law. It is contended that with respect to the very same transaction, the respondent had earlier lodged a complaint before the District Crime Branch, Villupuram. Pursuant to that complaint, summons were issued to the petitioner and he appeared before the authority and submitted a detailed reply dated 20.11.2023. Based on such reply and upon consideration of the materials placed, the said complaint was closed without further proceedings. It is further submitted that the petitioner did not issue any cheque dated 31.10.2023 as alleged by the respondent. According to the petitioner, the alleged cheque is fabricated and has been misused by the respondent. The entire complaint is thus nothing but a malicious prosecution initiated to harass the petitioner, and the continuance of the proceedings would amount to a miscarriage of justice. Hence, he prays to quash the proceedings.

4. Heard the learned counsel for the petitioner and perused the materials placed before this Court.

5. It is a settled proposition of law that the inherent powers of this



Crl.O.P.No.13750 of 2025

WEB COPY

Court under Section 528 of BNSS., are to be exercised sparingly and with great caution, particularly to prevent the abuse of process of any Court or otherwise to secure the ends of justice. In the present case, the respondent has filed a complaint under Section 138 of the Negotiable Instruments Act, alleging that a cheque issued by the petitioner towards repayment of a loan was dishonoured due to insufficiency of funds. The issuance of cheque, its dishonour, and the service of statutory notice are all factual matters which require trial and evidence. These aspects cannot be adjudicated upon in a petition under Section 528 of BNSS., at the threshold stage. That apart, the petitioner's claim regarding non-issuance of the cheque dated 31.10.2023 and the closure of a prior police complaint relating to the same transaction are issues of fact that can only be examined and decided by the Trial Court. The closure of the complaint before the District Crime Branch, *per se*, does not preclude the respondent from initiating the proceedings under Section 138 of the N.I. Act, as the ingredients of the offence are distinct and require independent examination by the Court. Therefore, this Court does not find any material irregularity or legal infirmity in the complaint that would justify



Crl.O.P.No.13750 of 2025

WEB COPY

interference under Section 528 of BNSS. The petitioner's contentions can be effectively raised before the Trial Court during the course of trial.

6. In view of the above discussion, this Court is of the considered opinion that no grounds are made out to quash the proceedings in S.T.C. No.1275 of 2024 pending on the file of the learned Judicial Magistrate No.1, Villupuram. However, it is open to the petitioner to raise all his contentions before the Trial Court, and the same shall be considered on its own merits and in accordance with law, without being influenced by any of the observations made herein. The personal appearance of the petitioner is dispensed with and he shall be represented by a counsel after filing appropriate application. However, the petitioner shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 351 of BNSS and at the time of passing judgment. The Trial Court is directed to complete the trial within a period of six months from the date of receipt of a copy of this order.



WEB COPY



Crl.O.P.No.13750 of 2025

G.K.ILANTHIRAIYAN, J.
shk

7. Accordingly, this Criminal Original Petition stands dismissed.

Consequently, connected miscellaneous petition is closed.

30.04.2025

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

To

1.The Judicial Magistrate No.1, Villupuram.

Crl.O.P.No. 13750 of 2025