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CrI.O.P.No. 18558 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2025

CORAM:

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

CrI.O.P.No.18558 of 2023 and
CrI.M.P.Nos.12352 and 12351 of 2023

R.Chandran

... Petitioner

Vs.

V.S.Radhakrishnan

..Respondents

PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 to call for the records quash the proceedings now pending in STC No.2508 of 2022 on the file of the Fast Track Court II, Metropolitan Magistrate Court, Egmore at Chennai.

For Petitioner : Mr.M.Aravind Subramanian,
Senior Counsel for
M/s.R.Kowsalya

For Respondent : Mr.A.R.Suresh

ORDER

This petition has been filed to quash the proceedings in STC No. 2508 of 2022 on the file of the Fast Track Court-II, Metropolitan

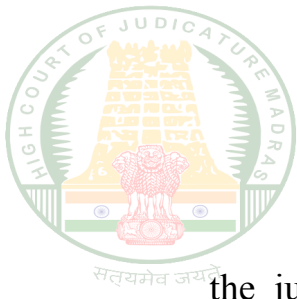


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Magistrate level, Allikulam, now transferred to the 25th Chief Metropolitan Magistrate Court, Egmore, Chennai.

2. The petitioner is an accused in the complaint lodged by the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act, alleging that the respondent is engaged in the real estate business. While being so, one A. Karthick was introduced to him by one Balasubramanian and Ashok, who are real estate brokers. The said Karthick represented to the respondent that he owned a large extent of land, measuring about 3 acres 88 cents situated at Veerapandi village in Survey No. 476, which was transferred to him by way of a settlement deed executed by his father, dated 31.07.2007, vide Document No. 3028/2007. Subsequently, due to a misunderstanding between them, the settlement deed was cancelled by a cancellation deed dated 18.07.2008, vide Document No. 3234 of 2008. Thereafter, the said Karthick filed a suit in O.S. No. 99 of 2023 before the District Munsif Court, Tiruppur, challenging the cancellation of the settlement deed. An ex-parte decree was passed in his favour on 18.06.2013. After obtaining



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the judgment and decree, the said Karthick registered the same vide Document No. P17/14 dated 11.03.2014.

3. On verification of all the documents, the respondent issued a public notice for the sale of the said property, inviting objections from the general public. The sale consideration was fixed at Rs. 3,10,00,000/-, and the said Karthick received a sum of Rs. 7,50,000/- on 28.10.2020, along with Rs. 2,50,000/- as advance. On 07.11.2020, another sum of Rs. 10,00,000/- was paid in cash. In total, Rs. 20,00,000/- was paid as an advance. Subsequently, at the request of the said Karthick, the respondent paid a sum of Rs. 1,05,00,000/- on various dates. In return, Karthick executed a power of attorney in favour of the respondent, which was registered by way of a sale deed, vide Document No. 1985/2021 dated 04.05.2021. Thereafter, the petitioner contacted the respondent, claiming to be a human rights activist and media person. The petitioner informed the respondent that the power of attorney deed executed by A. Karthick was not valid and that the original Karthick, who had already received Rs. 15 Lakhs from the petitioner, had entered into a sale



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agreement with one Veluchamy (the petitioner's benami) in respect of the same property, dated 20.12.2017. The petitioner claimed that the power of attorney executed in favour of the respondent was fabricated.

4. To resolve the issue, the respondent allegedly paid a sum of Rs. 20 Lakhs to the petitioner, and further agreed to pay a sale consideration of Rs. 2 Crores to the original Karthick. The petitioner also reportedly agreed to the same and entered into a Memorandum of Understanding dated 03.07.2021. Subsequently, the original Karthick demanded a sum of Rs. 50 Lakhs and another Rs. 2 Lakhs, with an assurance that these amounts would be deducted from the sale consideration. Believing the words of Karthick, the respondent paid the amounts. The petitioner is said to have obtained individual patta for 1 acre 30 cents and joint patta for 2 acres 58 cents in the name of the original Karthick, which were subsequently handed over to the respondent. Additionally, the sum of Rs. 20 Lakhs was paid to the petitioner, who in turn handed over the original agreement dated 20.12.2017 to the respondent.

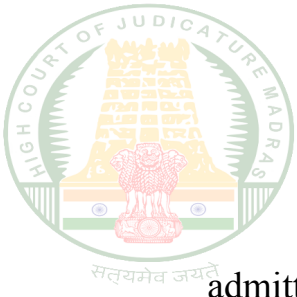


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5. Later, the respondent discovered that both Karthicks were brothers. To avoid complications, the respondent paid Rs. 1,46,00,000/- to the first Karthick (the fake one). Thereafter, on the strength of the power of attorney, the respondent executed sale deeds in respect of the property to various purchasers. The purchasers applied for patta, which was issued in their favour. Aggrieved by the same, the original Karthick lodged a complaint before the Revenue Divisional Officer. During the enquiry, it was found that all the documents produced were fake. subsequently, all pattas issued in favour of the Karthick were cancelled.

6. In order to avoid further complications, the respondent cancelled the sale deeds executed to the third parties. When the respondent questioned the petitioner, he allegedly gave evasive answers. As a result, the respondent lodged a complaint against the petitioner, alleging that the petitioner had swindled a sum of Rs. 3,43,00,000/- by producing fake documents. The complaint was forwarded by the Commissioner of Police, Tiruppur, to the Central Crime Branch (CCB), Tiruppur, for enquiry. During the enquiry, the petitioner reportedly



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admitted the entire allegation and agreed to return a sum of Rs.52,00,000/-. Towards repayment of the said amount, the petitioner issued four cheques for a sum of Rs. 5,00,000/- each. The cheques were presented for collection but returned dishonoured with the endorsement "insufficient funds." After issuing a legal notice, the respondent filed the complaint, which has been taken cognizance of by the Trial Court.

7. The learned senior counsel for the petitioner submits that there is no legally enforceable debt to justify the issuance of the cheques by the petitioner as surety. He further submitted that the statutory notice issued by the respondent demands a sum of Rs. 20 Lakhs in respect of the four cheques, but the respondent filed the complaint only for Rs. 10 Lakhs, and therefore, there is no cause of action to file the complaint.

8. Heard both sides and perused the materials placed before this Court.

9. On perusal of the records, it is revealed that though the



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respondent lodged a complaint in respect of two cheques for a sum of Rs. 10 Lakhs, he filed another complaint based on the same notice for two cheques for a sum of Rs. 10 Lakhs. Therefore, there is no cause of action for lodging the present complaint. However, the learned senior counsel submits that even after presenting the cheques, the petitioner sent a notice dated 05.05.2022, calling upon the respondent to return the cheques. In the view of this Court, this appears to be an attempt to escape liability and avoid proceedings under Section 138 of the Negotiable Instruments Act. As per the agreement, the petitioner had agreed to issue the cheques, but immediately after issuing them, he issued a legal notice. According to the petitioner, the cheques were issued as security at the time of entering into the Memorandum of Understanding between the original Karthick and the respondent. However, the Memorandum of Understanding does not mention the cheques as being issued as security. That apart, these grounds are factual in nature, and disputed facts cannot be examined by this Court under 528 of BNSS.

10. The Hon'ble Supreme Court of India in the judgment reported

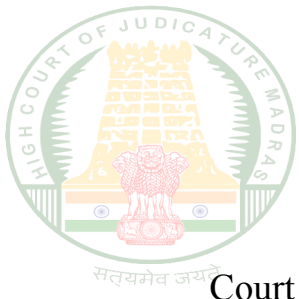


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in **2019 (4) SCC 351** in the case of **Devendra Prasad Singh Vs. State of Bihar & Anr., (Crl.A.No.579 of 2019 dated 02.04.2019)** while dealing with the petition to quash the entire criminal proceedings held that the High Courts have no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and therefore, there was no *prima facie* case made out as against the accused. It could be done only by the trial Court while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order that the charge sheet has been laid on the basis of the inconsistency statement under Section 180 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

11. Further, the Hon'ble Supreme Court of India in the judgment reported in **2019 (10) SCC 686** in the case of **Central Bureau of Investigation Vs. Arvind Khanna, (Crl.A.No.1572 of 2019** dated 17.10.2019) held that the High Courts cannot record the findings on the disputed facts. The defence of the accused is to be tested after appreciation of evidence by the trial Court during the trial. Therefore, this



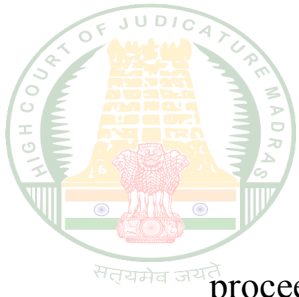
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Court has no power to consider the disputed facts under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

12. The Hon'ble Supreme Court of India in another judgment dated **02.12.2019** passed in ***Crl.A.No.1817 of 2019*** in the case of ***M.Jayanthi Vs. K.R.Meenakshi & anr***, held that while considering the petition for quashment of complaint or charge sheet, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. Further, the Court can also see whether the preconditions requisite for taking cognizance have been complied with or not and whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged. Whether the accused will be able to prove the allegations in a manner known to law would arise only at a later stage i.e., during trial.

13. In view of the above, this Court finds no grounds to quash the



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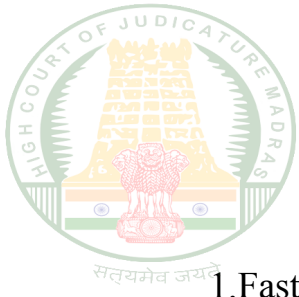
proceedings in STC No. 2508 of 2022 on the file of the Fast Track Court-II, Metropolitan Magistrate level, Allikulam, now transferred to the 25th Chief Metropolitan Magistrate Court, Egmore, Chennai.. Accordingly, the Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

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Neutral citation : Yes/No
Speaking/non-speaking order
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1.Fast Track Court-II, Metropolitan Magistrate level, Allikulam,

2.25th Chief Metropolitan Magistrate Court, Egmore, Chennai.

3.The Public Prosecutor,
High Court, Madras.

G.K.ILANTHIRAIYAN, J.



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