



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 07/09/2023

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The Hon'ble Mr.Justice **G.ILANGOVAN**

CrI.OP(MD)No.19190 of 2019

and

CrI.MP(MD)Nos.11254 and 11256 of 2019

Davidraj : Petitioner/Accused

Vs.

V.Pavel
rep. by his Power of Attorney
G.Pandian : Respondent/Complainant

PRAYER:-Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records relating to the petition and order in STC No.122 of 2016 pending before the Fast Track Court No.II, Judicial Magistrate Level, Madurai and to quash the same and pass such further or other orders.

For Petitioner : Mrs.S.Mahalakshmi

For Respondent : Mr.S.Muniyandi

O R D E R

This criminal original petition has been filed seeking quashment of STC No.122 of 2016 pending on the file of the Fast Track Court No.II, Judicial Magistrate Level, Madurai.



2. The case of the prosecution in brief:- The respondent as complainant filed a private complaint under section 200 Cr.P.C stating the following facts:-

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The complainant is an Advocate practising in Madurai District Court. This petitioner approached him in 2008 for legal assistance for filing insolvency petition. At that time, the petitioner was facing severe debts approximately Rs.1,32,02,000/- and various criminal cases have been registered, apart from money issue. For rendering the legal assistance, no fee was paid by the petitioner. The complainant conducted several cases. Assurance was made by him that he will execute sale deed for 10 cents, out of three acres of land comprised in Uthangudi, Madurai North Taluk. Believing his words only, he conducted several litigations. In November 2012, the petitioner requested him to permit him to stay in the office, since he is facing some threat to his life. Believing his words, he was also permitted. All the litigations were successfully taken to the logical conclusion. But the petitioner has taken some office bundles without his knowledge. Later he issued notice for giving consent for change of vakalath. At that time, the complainant demanded Rs.10,00,000/- as fee. That was also agreed by the petitioner and issued a cheque bearing



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No.416496 drawn on Oriental Bank of Commerce, Sivakasi.

It was presented for payment. That was also returned as 'Funds Insufficient'. So, he issued a notice, on 01/02/2014 demanding payment of money. But he sent reply repudiating the liability.

3.With these, he filed the above said private complaint for punishing the petitioner under section 138 of the Negotiable Instruments Act.

4.Seeking quashment of the same, this petition has been filed by the petitioner.

5.When the matter was taken up for hearing, since it is an issue between the client and the Advocate on account of payment of fee, the matter was referred to the Mediation, but no settlement could be arrived, in-spite of repeated adjournments.

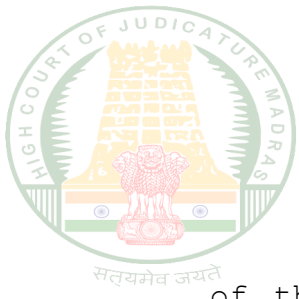
6.It was submitted by the petitioner to the effect that the respondent did not even attend the mediation process. He was sending only his juniors. According to the petitioner, the attitude of the respondent must be taken into account. Apart from that, it is submitted that claiming of Rs.10,00,000/- as legal fee is *per se* illegal



and it is against the provisions Legal Practitioner's Fees Rules, 1973.

7.Per contra, the learned counsel appearing for the respondent would submit that the above said cheque was not issued only towards the payment of legal fees, but it was discharged the liability of the petitioner to the complainant, since the complainant has incurred several expenses in the course of legal engagement. So according to him, this will not hit under the provisions of the Legal Practitioner's Fees Rules, 1973.

8.Per contra, the learned counsel appearing for the petitioner would rely upon the judgment of the Hon'ble Supreme Court in the case of ***B.Sunitha Vs. State of Telangana and another [2018(1)SCC 638]***. After elaborate discussion, the Hon'ble Supreme Court has replicated the practise of Advocates claiming fee, which is not legal, otherwise called as contingent fees. Absolutely, along with this complaint, no document indicating payment of Rs.10,00,000/- as fee has been enclosed showing the contract, apart from the legal fee as provided under the provisions of the Legal Practitioner's Fees Rules 1973.

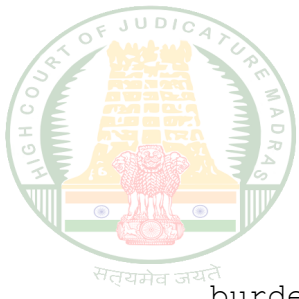


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9.To know about the document of enclosures, the copy of the documents have been called from the trial court. Wherein, we find that no such contract document is enclosed. But in the complaint, it has been stated that this petitioner agreed to pay Rs.10,00,000/- as whole sum fee for all litigations that were defended by the complainant. So, it is seen that it is not a contractual in nature.

10.Regarding the contingent fees as that one claimed by the respondent in this matter, the Hon'ble Supreme Court came down heavily upon such practice. Since the complaint was not filed on the basis of the contractual obligation, then automatically, the respondent cannot maintain the petition under section 138 of the Negotiable Instruments Act. Because, as mentioned above, the Rules does not prescribe the fee, which is not legal in nature under the Legal Practitioner's Fees Rules, 1973.

11.Even though, it has been submitted by the respondent to the effect that since the cheque was issued by the petitioner, which is not denied, automatically presumption under section 138 of the Negotiable Instruments Act will come into operation.

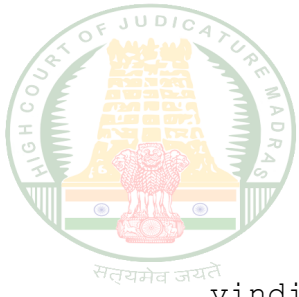


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12. Whether the mode of discharge, the above said burden is purely a factual issue, which cannot be discussed by this court. But, as mentioned above, the Hon'ble Supreme Court has taken up the issue and has deprecated such practise. As mentioned earlier, absolutely, no contractual document has been filed by the respondent to show the terms between the petitioner and himself to show all the litigations defended by him a consolidated fee was agreed to pay by the petitioner. In the absence of such primary document, or even the statement and the complaint, then mere issuing of the cheque in the facts and circumstances of the case will not create any legal liability.

13. Apart from that, in the light of the Legal Practitioner's Fees Rules 1973, the fee that has been claimed by the respondent *prima facie* shows illegal in nature. So, the illegal claim cannot be construed as legal claim. No legal liability can be fastened upon the petitioner to honour the above said cheque. So this contention on the part of the respondent is rejected.

14. This is a classical case of legal practitioner's abuse of the process of the court. So the continuation of proceedings amounts to illegal.



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15. Legal process can be undertaken to advance or vindicate the grievance, but it should not be permitted to be taken as an act of aberration, abuse and that too by any legal practitioner. So, the entire process is liable to be quashed.

16. In the result, this criminal original petition is **allowed**. The petition and order in STC No.122 of 2016 pending on the file of the Fast Track Court No.II, Judicial Magistrate Level, Madurai, is hereby quashed. Consequently, connected Miscellaneous Petitions are closed.

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Index:Yes/No
Internet:Yes/No

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To,

The Fast Track Court No.II,
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Madurai.



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