

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Cr1.O.P.No.208 of 2014

and

M.P.Nos.1 & 2 of 2014

1.M/s.C.S.M.Enterprises,
rep. by its Partner Mr.ChockalingamKailasam.
2.Mr.Chockalingam Kailasam,
No.3033, 6th Cross Street,
Ram Nagar South,
Madipakkam,
Chennai-600 091. ... Petitioners

Vs

M/s.Managadu Kamatchi Amman Concrete
Hollow Blocks,
Represented by its Partner mr.Ramraj,
No.547, Tharapakkam Main Road,
Gerugampakkam,
Chennai-600 122. ... Respondents

Criminal Original Petition filed under Section 482 Cr.P.C.
to call for the records in C.C.No.172 of 2013 pending on the
file of the Fast Tract Court, Alandur, Chennai and to quash the
same in respect of the petitioners herein.

For Petitioners : Mr.S.Ratnasabapathy

For respondent : Mr.P.Kumaresan

O R D E R

The present criminal original petition has been filed
by the petitioners praying to quash the criminal proceedings in
C.C.No.172 of 2013 pending on the file of the Fast Tract Court,
Alandur, Chenani. The petitioners herein have been arrayed as
accused 1 & 2 in the said case.

2.The respondent herein/defacto-complainant has lodged the complaint as against the petitioners herein for the alleged offence punishable under Section 138 of the Negotiable Instruments Act. It is averred in the complaint by the respondent/defacto-complainant as follows:-

The respondent is carrying on business of manufacturing Solid Blocks, in the name and style of M/s.Mangadu Kamatchi Amman Concrete Hollow Blocks. He was supplying the Solid Blocks to the petitioners herein/accused from the year 2010. There is outstanding amount of Rs.9,08,926/- payable by the petitioner/accused persons to the respondent. After repeated request from the respondent, the 2nd petitioner/A2 had issued three cheques_ 1)Cheque No.116144 for R.3 lakhs, dated 12.08.2013, 2)Cheque No.116145 for Rs.2 lakhs dated 12.08.2013, 3)Cheque No.116146 dated 12.08.2013 for Rs.2 lakhs and all the said three cheques were drawn on M/s.AXIS Bank, Velacherry Branch, Chennai. At request from the 2nd petitioner/A2, the respondent had presented the cheque bearing No.116144 for collection on 12.08.2013 in his banker M/s.Karnataka Bank, Porur Branch, Chennai; but, the same was returned for the reason 'Funds Insufficient' on 13.08.2013. At request of the 2nd petitioner/A2, the respondent again presented the said cheque on 22.08.2013; but, the same was again returned for the same reason on 23.08.2013. Further, at the instructions from the 2nd petitioner/A2, the respondent had presented the other two Cheques bearing Nos.116145 and 116146 on 12.08.2013 and subsequently on 17.09.2013; but, the same were returned for the reason 'Funds Insufficient' and intimations were received on 13.08.2013 and 18.09.2013 respectively. Hence, the respondent issued a legal notice dated 21.09.2013 to the petitioners and the same was received by them on 23.09.2013'; but, no reply was sent by them to the respondent. Since the petitioners issued the cheques and subsequently, allowed to dishonour the same by keeping insufficient funds in their bank account, they are liable to be punished under Section 138 of the Negotiable Instruments Act. Hence, on 24.10.2013, the respondent has lodged the complaint as against the petitioners before the Fast Tract Court at Alandur and the same has been taken on filed in C.C.No.172 of 2013.

3.Now, the petitioners have come forward with the present petition before this Court seeking to quash the said proceedings.

4.It is the only ground raised by the learned counsel for the petitioners that in para 8 of the complaint, it has been stated by the respondent/defacto-complainant that he had issued a legal notice dated 21.09.2013 and the said notice was received by the accused on 23.09.2013 and no reply was sent by them. But, in the complaint, the respondent/defacto-complainant has filed to state in clear terms that whether the accused persons

have failed to pay the amount or gave any other excuses. It is mandatory to mention in the complaint as to whether the accused had paid the amount or not. Since the respondent has not whispered anything about the non-payment of amount by the accused in the complaint, the complaint is liable to be quashed. In this regard, the learned counsel for the petitioner has also relied upon the judgment reported in 2003 Cri. L.J. 520 (K.Devaraj Vs. T.K.Koya).

5.Heard the learned counsel for the petitioners as well as the learned counsel for the respondent and perused the materials available on record.

6.From a careful perusal of the complaint given by the respondent/defacto-complainant, I find that in para-9 of the complaint, the respondent has categorically stated that the petitioner had issued three cheques and dishonoured the same by keeping insufficient funds in their bank account, with an intention to defraud the respondent. Thus, the respondent has impliedly stated that he has not received the amount. Therefore, the judgment relied upon by the learned counsel for the petitioner cannot be made applicable to the present facts of the case. At the maximum, the submissions made by the learned counsel for the petitioner could be their defence during the trial, and the same will not serve as a ground to quash the criminal proceedings at this stage. Hence, I am not inclined to allow this petition and the same liable to be dismissed.

In fine, the criminal original petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

SSV

To,

1.The Fast Tract Court,
Alandur, Chennai.

+1 cc to M/S.P.Kumaresan Advocate sr.68953

+1 cc to M/s.S.Ratnasabapathy Advocate sr.68435

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