

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Crl.O.P.Nos.6417 and 6428 of 2015

and M.P.Nos.1,2, 1 and 2 of 2015

PL.Aandappan

...

Petitioner in
Crl.O.P.No.6417/2015/
Accused

A.Sornalatha

...

Petitioner in
Crl.O.P.No.6428/2015/
Accused

Vs

Kothandapani

...

Respondent in both
the O.Ps /Complainant

Criminal Original Petitions filed under Section 482
Cr.P.C. to call for the records relating to C.C.Nos.50 and 49 of
2011 respectively on the file of the Judicial Magistrate No.I,
Villupuram and quash the same.

For Petitioner : Mr.C.Munusamy
in both the petitions

For Respondent :M/s.Sree and Associates,
in both the petitions.

COMMON ORDER

The present criminal original petitions have been
filed to call for the records relating to C.C.Nos.50 and 49 of
2011 respectively on the file of the learned Judicial Magistrate
No.I, Villupuram and quash the same.

2. The petitioners are accused in C.C.Nos.50 and 49 of
2011 respectively on the file of the learned Judicial Magistrate

No.I, Villupuram. The complaints were lodged by the respondent as against the petitioners under Section 138 of the Negotiable Instruments Act.

3. It is the case of the respondent / complainant that on 4.9.2004, the petitioners borrowed a sum of Rs.1,90,000/- and Rs.2,53,000/- respectively from the respondent and on the same day, they have executed letters acknowledging the debt and issued post dated cheques dated 10.6.2005 and 1.6.2005 bearing Nos.7393321 and 738873 respectively drawn on City Union Bank Limited, Villupuram Branch and assured sufficient bank balance to honour the cheques. The respondent presented both the cheques for collection with his banker Karur Vysya Bank Limited, Villupuram Branch on 13.6.2005. But, the said cheques were dishonoured and returned with a memorandum dated 14.6.2005. After receipt of the intimation, the respondent issued notices dated 11.7.2005 to the petitioners through his counsel demanding them to pay the cheque amount within 15 days of receipt of notice. Though the notices were sent to the correct address, the petitioners evaded service and notices were returned on 22.7.2015 with an endorsement 'Door Locked'. Thereafter, the respondent after expiry of the statutory period, has filed the present complaints as against the petitioners under Section 138 of the Negotiable Instruments Act and the same were numbered as C.C.Nos.50 and 49 of 2011. Now, the petitioners have filed the present petitions to quash the said proceedings.

4. It is the main contention of the learned counsel appearing for the petitioners that the complaints have been filed before the learned Magistrate on 19.5.2005 and the same were returned for certain compliance. But, the said complaints were not re-presented within the stipulated time and they were re-presented only in the year 2011, after a period of six years and the same were taken on file without issuing notice to the other side. The learned Magistrate has ordered to number both the complaints on condition that a sum of Rs.500/- each to be paid to the legal aid fund within a period of three days. Though there is an inordinate delay of six years, the learned Magistrate without issuing notice to the other side, ordered for numbering the complaint. Hence, the petitioners have come up with the present petitions seeking to quash the proceedings in C.C.Nos.50 and 49 of 2011. In support of his contention, learned counsel appearing for the petitioners relied the decision of this Court reported in **2007 (1) CTC 291 - Lakshmi Srinivas Savings & Chit Funds Syndicate Pvt. Ltd. v. S.Bhojarajan.**

5. A perusal of the said decision would go to show that in the said case, the trial Judge on consideration of the entire evidence adduced by the complainant both oral and documentary, came to the conclusion that the complainant failed

to prove his case and acquitted the accused in that case. While acquitting the accused, the delay of nearly about 2 years and 8 months in re-presentation of the complaint was also taken into consideration as one of the grounds for acquittal. Hence, the said decision cannot be used to quash the present proceedings. Further, in the instant case, in the year 2011 itself, both the complaints were numbered and thereafter, P.W.1 was also examined. Now, after a lapse of four years, the petitioners have filed the present petitions. Hence, at this juncture, these petitions cannot be entertained.

6. Hence, both the criminal original petitions are dismissed. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The Judicial Magistrate No.I,
Villupuram.

+2 ccs to M/S.Sree & Associates sr.67270 & 67271
+1 cc to Mr.C.Munusamy Advocate sr.66847

Crl.O.P.Nos.6417 and
6428 of 2015

सत्यमेव जयते

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