

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.06.2016

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CrI.O.P.No.12729 of 2016

and CrI.M.P.Nos.6579, 6580 of 2016

1.A.Shanthi
2.A.Nandhini

Petitioners/
A3 & A4

Vs.

P.Thilagavathi,
Proprietrix of M/s.Sri Vedathiri Traders,
Rep by her Power of Attorney agent,
N.R.Pandurangan,
Office at No.99-A,
Big Bazaar Street,
Thiruvannamalai Town.

Respondent

Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in STC.No.31 of 2016 on the file of the learned Judicial Magistrate-I, Thiruvannamalai and quash the same.

For Petitioners : Mr.R.Muniyapparaj

For Respondent : C.Emalias

Additional Public Prosecutor

O R D E R

This petition has been filed to quash the proceedings in STC.No.31 of 2016 on the file of the learned Judicial Magistrate-I, Thiruvannamalai.

2. Heard the learned counsel for the petitioners and perused the materials placed on record.

3. For the sake of convenience, the parties will be referred to as the complainant and the accused. It is the case of the complainant that the accused 2 to 4 are partners in M/s.Lakshmi Traders [A1] and they are into the business of hardware. It is alleged by the complainant that the accused had

purchased paddy for Rs.28,49,100/- and to discharge the said liability, the accused has given a cheque, which when presented, was dishonoured. Thereafter, the complainant issued a statutory notice dated 23.10.2015 to all the accused calling upon them to pay the amount. It is specifically averred that A1 to A3 received the notice on 13.11.2015, but A4 refused to receive the notice, which was returned unserved. Since the accused did not comply with the demand notice, the complainant has filed the present complaint in STC.No.31 of 2016 before the learned Judicial Magistrate-I, Thiruvannamalai for an offence under Section 138 of Negotiable Instruments Act. Challenging which, the accused are before this Court.

4. Mr.Muniyapparaj, learned counsel appearing for the accused[A3 & A4] would submit that the address of M/s.Lakshmi Traders [A1] is shown as H82/F2-First Floor, Valmiki Nagar, Thiruvanmiyur, Chennai-41 and the address of the partners has been shown as No.88, Big Street, Thiruvannamalai in the statutory notice dated 23.10.2015, that is said to have been issued by the complainant.

5. It is the contention of the learned counsel for the accused that the statutory notice should have been sent to Thiruvanmiyur address and not to Thiruvannamalai. The partnership firm is not a juristic person in the eye of law, since it does not have an independent existence like a company incorporated under the Companies Act. All partners are individually and severally liable for the debts of the firm. However, the question as to whether the statutory notice was received is a fact, which cannot be determined in a prosecution under Section 482 Cr.P.C. Hence, this petition is devoid of merits and dismissed, with liberty to the petitioners to raise all the points before the trial Court.

6. Mr.Muniyapparaj, learned counsel prayed for dispense with the personal appearance of A.Shanthi and A.Nandhini, who are ladies, before the trial Court.

7. Accepting his submission, the petitioners/accused are directed to furnish a bond under Section 88 Cr.P.C. for Rs.10,000/- with two common sureties to the satisfaction of the trial Court and they are directed to be present for receiving the complaint, for answering the charge, at the time of questioning under Section 313 Cr.P.C. and at the time of passing judgment. The petitioners shall file affidavit of undertaking, before the trial Court that they will not dispute their identity and that their counsel will cross-examine the prosecution witnesses on the day they are examined in-chief and that they will not adopt dilatory tactics. On such undertaking, the trial Court shall dispense with the personal appearance of the petitioners. If the petitioners adopts any dilatory tactics,

the trial Court can insist on their presence.

8. Mr.Muniyapparaj, learned counsel submitted that the parties are very close relatives and there is possibility for arriving an amicable settlement.

9. Accepting his submission, the trial Court is directed to refer the matter to the Mediation Centre for the parties to appear there and workout a settlement. The mediation process is directed to be completed, within a period of one month from the date of receipt of a copy of this order.

With the above direction, this petition is closed. Consequently, connected Miscellaneous Petitions are closed.

s/d-

Assistant Registrar(CSVI)

True Copy

Sub-Assistant Registrar

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To

1.The Judicial Magistrate-I,
Thiruvannamalai.

2.-do-Thro The Chief Judicial Magistrate
Tiruvannamalai

3.The Public Prosecutor,
High Court, Madras.

copy to

The Assistant Registrar
Tamil Nadu Mediation and Conciliation Centre
High Court Chennai

+1 cc to Mr.Muniyapparaj Advocate sr.34243

Cr1.O.P.No.12729 of 2016

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