

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2016

CORAM:

THE HONOURABLE MS.JUSTICE R.MALA

CrIOP.No.7067 of 2016
and CrIIMP.Nos.3695 and 3696 of 2016
and CrIOP.No.7068 of 2016
and CrIIMP.Nos.3697 and 3698 of 2016
and CrIOP.No.7069 of 2016
and CrIIMP.Nos.3699 and 3700 of 2016

1.P.Mayakrishnan

2.M/s.Shree Neel Construction Corporation
rep.by its Prop.P.Mayakrishnan,
No.D-1, Plot No.76, VGN Nagar,
Ayyappanthangal,
Chennai-600 056. ...Petitioners in all CrIOPs

Vs.

Y.Hariharan ...Respondent in all CrIOPs

Prayer in all CrIOPs: Criminal Original Petitions are filed under Section 482 of Cr.P.C., praying to call for the records in C.C.Nos.2429, 2430 and 2431 of 2015 on the file of the learned Fast Track Court No.III (Metropolitan Magistrate), Saidapet, Chennai and quash the same.

For Petitioners :Mr.R.Perumal Swamy
in all CrIOPs

For Respondent :Mr.C.Emalias
Additional Public Prosecutor
in all CrIOPs

COMMON ORDER

These petitions have been filed to quash the proceedings in C.C.Nos.2429, 2430 and 2431 of 2015 on the file of the learned Fast Track Court No.III (Metropolitan Magistrate), Saidapet, Chennai.

2.The learned counsel appearing for the petitioners submitted that the petitioners are doing construction works and they borrowed some amount from the respondent. At that time, they gave 5 blank cheques, 5 blank pro-notes, 5 blank stamp papers and 5 blank white papers duly signed by the petitioners as security. He further submitted that the 1st petitioner repaid the entire amount in the year 2004 itself. When the 1st petitioner requested to return the abovesaid blank documents, the respondent informed the 1st petitioner, as if the blank cheques and blank documents were misplaced and assured them not to misuse the same. The cheques were issued in the year 2004, but the cheques have been presented in the Bank in the year 2014. Hence, he prays for quashing the proceedings in C.C.Nos.2429, 2430 and 2431 of 2015 on the file of the learned Fast Track Court No.III (Metropolitan Magistrate), Saidapet, Chennai.

3.The learned counsel appearing for the respondent submitted that the respondent has filed a complaint stating that the amount has been given for loan purpose, to discharge the same, cheques have been issued. When the cheques were presented in the Bank, the same has been returned as "insufficient funds" and after issuance of statutory notice, the present complaint has been preferred.

4.The learned counsel appearing for the petitioners contended that the cheques in question have been issued only as security in the year 2004 and not in the year 2014, as alleged by the respondent in his complaint.

5.At the time of admission, arguments heard in length and the petitioners herein are the accused in C.C.Nos.2429, 2430 and 2431 of 2015 on the file of the learned Fast Track Court No.III (Metropolitan Magistrate), Saidapet, Chennai, for offence punishable under Section 138 of the Negotiable Instruments Act. Hence, the respondent has filed the complaint under Section 200 CrPC for offence punishable under Section 138 of the Negotiable Instruments Act stating that the petitioner herein borrowed money, to discharge the same, he issued cheques and when it was presented for encashment, it was returned as "insufficient funds". After receipt of statutory notice, the petitioners herein neither repaid the amount nor sent any reply. Hence, the petitioner has filed the complaint for offence punishable under Section 138 of the Negotiable Instruments Act. Whether the cheques have been issued as security and whether it was issued in the year 2004 or 2014, have to be decided only at the time of trial, after examination of the witnesses. It is only a question of fact, which has to be decided after letting both the oral and documentary evidence.

6.Furthermore, the learned counsel appearing for the petitioner would submit that the petitioner has already discharged the amount and he filed a statement. But, the statement cannot be taken as a gospel truth unless it is verified by the author of the documents and it cannot be decided at the time of dealing with the quash petition. Since the issue involved is whether the cheques have been issued as security and whether the entire amount has been discharged, the same have to be decided only at the time of trial, which is only the question of fact. Hence, this petition deserves to be dismissed.

Accordingly, these Criminal Original Petitions are dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Fast Track Court No.III,
(Metropolitan Magistrate),
Saidapet,
Chennai.

2.The Public Prosecutor,
Madras High Court,
Madras.

+3cc to Mr.R.Perumalswamy, Advocate Sr.20036 to 20038

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kgk(CO)
srg(27/04/2016)