

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRL.O.P.Nos.6059, 6078, 6079 & 6081 of 2011 and
M.P.Nos.1,1,1,1,2,2,2 and 2 of 2011

Muthaiya .. Petitioner/Accused in all Crl.OPs

Vs.

Siva Reddy .. Respondent/Complainant in all Crl.OPs

Common Prayer:- Criminal Original Petition filed under Section 482 of the Cr.P.C. to call for the records pertaining to the pending proceedings in C.C.Nos.326, 324, 327, 325 of 2010 respectively, on the file of the learned Judicial Magistrate No.I, Ponneri, Tiruvallur District and quash the same.

(In all Crl.OPs)

For Petitioner : Mr.T.R.Ravi

For Respondent : No Appearance

COMMON ORDER

This criminal original petition is filed under section 482 of Cr.P.C. to call for the records pertaining to the pending proceedings in C.C.Nos.326,324,327,325 of 2010 respectively, on the file of the Learned Judicial Magistrate No.I, Ponneri,Thiruvallur District to quash the same.

2.Brief case of the petitioner in all the Crl.O.Ps:

The facts of the case is that the petitioners/accused acted as a mediator for selling immovable properties of the respondent/complainant to the private companies situated at his village, and later stage the petitioner received a sum of Rs.70 Lakhs as a loan to purchase a land to improve his business and to discharge his liability and issued a post dated cheque numbering four, each valuing at Rs.9 Lakhs. On the instruction of the petitioner/accused the complainant presented the cheques in his bank viz, Indian Overseas Bank, Ponneri branch and the same were returned with endorsement of insufficient funds. After following all formalities, complainant filed the four private complaints before the learned Judicial Magistrate No.I, Ponneri

in C.C.Nos.326,324,327,325 of 2010 respectively. Aggrieved over the same, this quash petition is filed.

3.Heard the arguments on behalf of the petitioner and perused the entire materials available on record. No representation on behalf of the respondent.

4.The learned counsel for the petitioner/accused submits that the land belongs to the petitioner/accused's wife was mortgaged for a sum of Rs.50 Lakhs to one Mr.Srinivasan on 1.7.2009. The said Srinivasan is the agent of the complainant. This document was registered before the Sub Registrar office, Thiruvottiyur. The complainant herein also executed a acceptance and declaration deed on 1.7.2009 in favour of the petitioner/accused stating that for the liability of the petitioner/accused complainant accepted the mortgage deed executed by the wife of the petitioner/accused for a sum of Rs.50 Lakhs and also stated that there was no liability at all.

5.The learned counsel for the petitioner/accused submits that the petitioner/accused discharged his entire liability by way of mortgaging his wife's property in favour of the complainant's agent which was also duly accepted by the complainant. At this stage suppressing the above said facts, filing a private complaint under section 138 of N.I.Act r/w 420 of IPC. The ingredients of the offence either under section 138 of N.I. Act or under section 420 of IPC are not made out and entire complaint is liable to be quashed for the mis-joinder of charges.

6.In the case on hand, both the petitioners and the defacto complainant wre jointly doing the real estate business. During the course of the business on 01.07.2009, the petitioner's wife Mrs.Subbulakshmi executed a mortgage deed in favour of one Mr.Srinivasan S/o Perumal. Subsequently , on the same day, the responseent/defecto complainant had executed a document on 01.07.2009 itself, stating that the execution of the mortgage deed by the petitioner's wife is the mode of settlement and the entire amount of Rs.50 Lakhs was settled. Therefore as on date, there is no amount to be paid by the petitioner to the respondent/defecto complainant.

7.After that, the respondent/defacto complainant had executed the four cheques each contained of Rs.9 lakhs and the said cheque was deposited by the respondent the same were

returned as insufficient funds. Hence the respondent/complainant lodged a private complaint under section 138 of the Negotiable Instruments Act.

8.In fact the complainant has filed this complaint under Section 138 of Negotiable Instruments Act and the penal provision of Section 420 of Indian Penal Code, which cannot be filed as the mis-joinder of charges. Once the complaint invoke the jurisdiction under the Negotiable Instruments Act, he/she can be proceed independently, but the complainant cannot invoke both the offences which are totally different and hence very filing of the private complaint under Section 138 of Negotiable Instruments Act and Section 420 of I.P.C. is not maintainable and it is liable to be quashed on this ground alone.

9.Admittedly, a mortgage deed has been executed by the petitioner for the entire amount of Rs.50 Lakhs and it has been accepted by the respondent/complainant. Hence there is no question of any dues for which the impugned cheques were issued. Therefore I am inclined to allow all the quash petitions filed by the petitioner/accused.

10.In the result, these criminal original petitions are allowed and proceedings pending in C.C.Nos.324 to 327 of 2010 on the file of the Learned Judicial Magistrate No.I, Ponneri, Thiruvallur District are set aside. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

vs

Sub Assistant Registrar

To

The Judicial Magistrate No.I,
Ponneri, Tiruvallur District.

+4 ccs to Mr.T.R.Ravi, Advocate, S.R.No.42989 to 42992/2019

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6079 & 6081 of 2011 and
M.P.Nos.1,1,1,1,2,2,2 and 2 of 2011

RJI (CO)
SSM(19/03/2019) .