

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED .07.2017

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

RESERVED ON :19.07.2017

PRONOUNCED ON :28.07.2017

Crl.OP No.32649 of 2013

and

M.P.Nos.1 and 2 of 2013

1.M.Mohan

2.M.Revathi

3.R.Gayathiri

.. Petitioners/Accused 3,4 & 6

..Vs..

R.Manivel

.. Respondent/Complainant

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in respect of the complaint filed by the respondent herein in C.C.No.256 of 2013 on the file of Judicial Magistrate I, Namakkal and quash the same.

For Petitioners : Mr.R.Nalliyappan

For Respondent : Mr.R.Jaikumar
for M/s.T.Fenn Walter Associates

ORDER

This Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records in respect of the complaint filed by the respondent herein in C.C.No.256 of 2013 on the file of Judicial Magistrate I, Namakkal and quash the same.

2. The short facts of this case is that the accused 3,4 and 6 are the petitioners herein. The petitioner herein filed this quash petition, to quash the complaint given by the respondent herein against the petitioner herein and others before the Judicial Magistrate No.I, Namakkal in C.C.No.256 of 2013 under Section 138 of the Negotiable Instrument Act. The respondent herein filed the above complaint under Section 138 of Negotiable Instrument Act. As per the complaint of the respondent, the petitioner herein and the 5th accused are partners of 2nd accused Sai Farms and Feeds and on behalf of the 2nd accused the 5th accused alleged to have executed 14 cheques to a value of Rs.10,50,000/- to discharge liability occurred in course of

transactions. After receipt of the cheque he has presented the cheque for collection, but the same were returned as "payment stopped". Aggrieved over the same, the respondent issued legal notice to the petitioners and two others 03.05.2013. The petitioner herein also issued a suitable reply notice to the respondent on 10.06.2013 wherein they have categorically stated that the petitioners 2 and 3 have no role in the said transactions, but even then the respondent filed the above complaint by implicating this petitioner as accused under Section 138 of Negotiable Instrument Act and aggrieved over the same the petitioner herein filing the above Criminal Original Petition.

3. The learned counsel for the petitioners has submitted that the petitioners are neither the signatory nor the partner to the 2nd accused, however it is not correct to implicate the petitioner herein as accused in the above case. The Judicial Magistrate ought not to have taken cognizance of the complaint against the petitioner herein, since on behalf of the 2nd accused the 5th accused has issued cheque in favour of the respondent, under such circumstances it is not correct to implicate the petitioners as accused since they are neither signatory of the cheque nor having any role under the 2nd accused.

4. The learned counsel for the respondent has filed an additional typed set of papers.

5. The attention of this Court is drawn to the xerox of the cheque-in- issue dated 20.02.2013 which was signed by the authorized signatory for Sai Farms and Feeds. All the 14 cheques are issued by Sai Farms and Feeds.

6. It is seen from the records, a private complaint under Section 200 Cr.P.C has been filed by the respondent/complainant before the learned Judicial Magistrate No.I, Namakkal for alleged offence under Section 138 of Negotiable Instruments Act, alleging that the first accused namely R.Manivel for the material supplied by the complainant for the said amount. He has issued the legal notice and for which, the first accused issued a legal notice dated 03.05.2013, wherein, he has admitted the liability. However, sought for sometime, it is seen that accused Nos.A3,A4 and A6 are partners in the A1 Firm. While, A5 is the the proprietary of the A2 Proprietary concern.

7. According to the respondent/complainant on 30.01.2013, the proprietor of Revathy Agency, viz Moka has requested the Sri Sai Krishna Feeds to pay the bill. Pending against them in the Manisha Traders from and out of the amount due to be payable

by the Sai Krishna Feeds/first accused and that letter is dated 30.07.2013 and that another document dated 05.02.2013 reflecting supply of Maize by the complainant to the Sri Sai Krishna feeds on various dates mode of transportation, weight, trade, credit and debit in the form of balance sheet also signed by him. So also, the copy of the another letter has been filed dated 18.03.2013 wherein Sri Sai Krishna Feeds alleged to have accepted the legal liability to the Manisha Traders/the complainant.

8. Based upon these documents, the first respondent/complainant contended that for the supply of cattle feed to the first respondent had admitted the liability under the legal notice dated 03.05.2013 and the second accused has admitted to pay the amount on behalf of the first accused issued the cheque and therefore, in view of the admitted position of their liability to pay the amount for the supply of cattle feed and undertaking to pay the said amount on behalf of the first accused. All the accused have been arrayed in view of the letter undertaking to pay the liability and also legal notice admitting the liability with the complainant.

9. The learned counsel for the petitioner/accused have contended that they are not genuine and true documents and all the documents filed in the additional typed set of papers are forged and fabricated for the purpose of the case.

10. After hearing the rival submissions of both the parties and after going through the documents filed before this Court, taking into consideration, scope of the enquiry that can be carried on by this Court under Section 482 of Cr.P.C and the stand of the complainant that the liability to pay the amount has been admitted through the legal notice and undertaking to pay the said legal notice on behalf of the first accused by the second accused and they are all partners of the said firm.

11. This Court is of the considered view that whether the documents now filed before this Court is true or not? and genuine, can be decided only during the course of trial and not by this Court while exercising the power under Section 482 Cr.P.C. Besides, this Court is not expressing any view on the truth and genuineness of the letter of undertaking alleged to have given by the second accused on behalf of the first accused and after going through the averments made in the complaint before the trial Court. Since, there is a specific allegation against all the accused and as such, a cheque has been issued authorized signatory for Sai Farms and Feeds/second accused and in view of the certain documents filed, the truth and genuineness will be decided only by the trial Court, I am of the considered

view that in view of the factual matrix of the case and admissibility of the certain documents alleged to have been executed by the accused namely legal notice dated 03.05.2013 issued by the first accused wherein, he admitted the liability and the truth and genuineness of the letter of undertaking which is alleged to have been given by the second accused for the first accused are all can be gone into only by the trial Court and therefore, this Court is of the considered view that the contention of the learned counsel for the petitioner that the present being petitioners are not signatory to be cheque and hence, the proceedings against that needs to be quashed cannot be entertained at this stage, in view of factual matrix of the case. In view of the aforesaid of the facts of the case and documents relied upon by the respondent/complainant herein.

12. As stated supra, the truth and genuineness of the documents relied upon by the respondent/complainant can only be gone into at the time of trial before the trial Court and with these observations, this Court is of the considered view that this Criminal Original Petition as devoid of merits and same is rejected. It is open to the petitioners/accused 3,4,and 6 to raise objections as to the admissibility and reliability of the documents filed by the respondent/complainant before the trial Court and it is hereby made clear that observations made in the preceding paragraphs is only for a limited extent to determine the issue involved in this case and trial Court shall proceed with a trial without being influenced by the observation of this Court in the preceding paragraphs.

13. With these observations, this Criminal Original Petition is dismissed and the Judicial Magistrate No.I, Namakkal is directed to complete the trial within a period of six months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

nvi

To

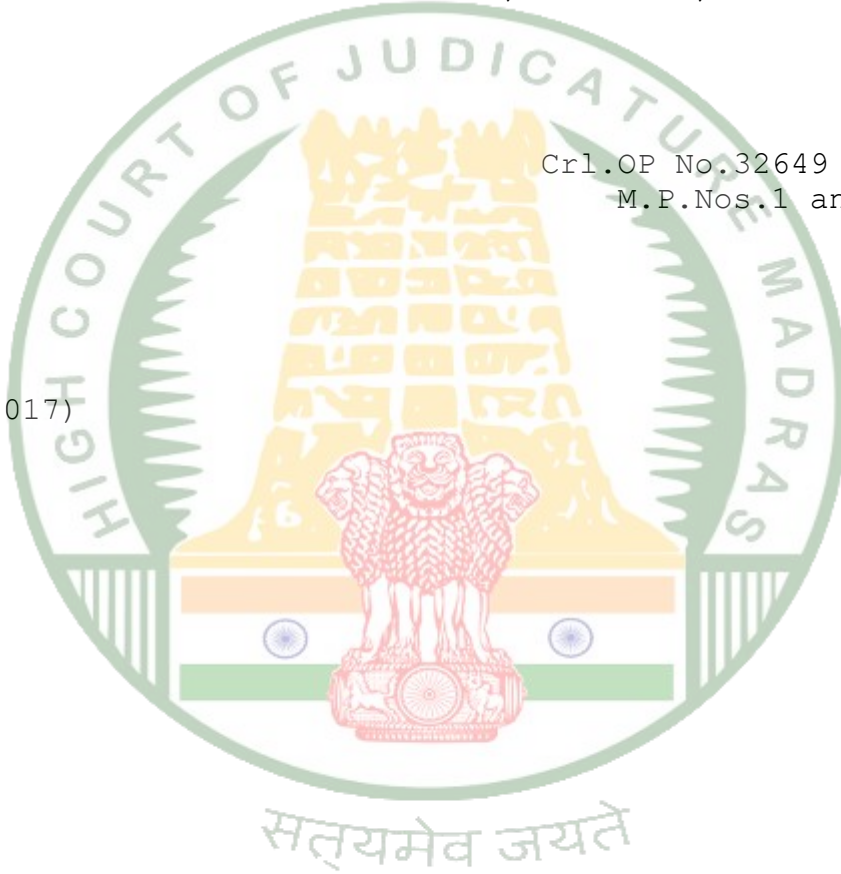
1. The Judicial Magistrate I, Namakkal
2. -do this- The Chief Judicial Magistrate, Namakkal
3. The Public Prosecutor,
High Court, Madras.

+1cc to M/s.R.Nalliyappan, Advocate, S.R.No.53938

+1cc to M/s.T.FENN WALTER ASSOCIATES, Advocate, S.R.No.53889

Judgment in
CrI.OP No.32649 of 2013 and
M.P.Nos.1 and 2 of 2013

RJ (CO)
CU (17/08/2017)



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