



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.12.2017

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRL.O.P. (MD) Nos.16622 and 16623 of 2017
and
CRL.M.P. (MD) Nos.10985 and 10986 of 2017

K.Madasamy

... Petitioner/Accused in both cases

-Vs-

M/s.Sree Gokulam Chit & Finance Co.(P) Ltd.,
Chennai, represented by its Authorised Agent,
R.Robinson.

...Respondent / Complainant in both cases

Common Prayer: Criminal Original Petitions filed under Section 482 of Code of Criminal Procedure, to call for the records and quash proceedings in STC Nos.202 and 203 of 2016 pending before the learned Judicial Magistrate No.IV, Tirunelveli.

For Petitioner in both cases : Mr.P.Jesus Moris Ravi

COMMON ORDER

These Criminal Original Petitions have been filed to call for the records and quash proceedings in STC Nos.202 and 203 of 2016 pending before the learned Judicial Magistrate No.IV, Tirunelveli.

2.The petitioner is the guarantor for the chit, subscribed by his brother, one Mr.Thiruvadi, who has become successful bidder in Ticket No.10 for a value of Rs.25,00,000/- in the chit group. It is the further case of the petitioner that the brother of the petitioner herein expired on 23.04.2014 and that the petitioner, as a guarantor facing arbitrary proceedings for recovery of the amount, which was due under the chit transaction.

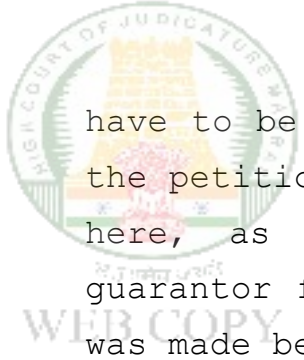


3.It is stated that the dispute in A.R.C.No.82 of 2015 is pending before the concerned authority under the provisions of Tamilnadu Chit Fund Act. The respondent herein, has filed two complaints in STC Nos.202 and 203 of 2016 on the file of the learned Judicial Magistrate No.IV, Tirunelveli, for the offences punishable under Section 138 of Negotiable Instruments Act, stating that the petitioner has handed over two cheques, which later gets dishonored as "Insufficient Funds".

5.The learned Counsel for the petitioner submitted that the complaint is an abuse of process of law, in view of the fact that the respondent had already initiated proceedings for recovery of the amount by arbitration. It is also stated that some properties of the petitioner are also shown as security for the transaction and that the arbitrary proceedings is also pending. Even in the arbitrary proceedings, the valuable properties of the petitioner are available for enforcing the claim, that was made by the respondent as against the petitioner.

6.The learned Counsel for the petitioner then submitted that the petitioner stood as a guarantor only in respect of one out of three tickets, under which the respondent claimed to have given payment to the petitioner's brother. It is also stated that the petitioner has admitted before the arbitration that Mr.Thiruvadi was holding only one chit, namely, Ticket No.10 and that there was no other transaction between the petitioner's brother and the respondent.

7.Except the above submissions, the learned Counsel for the petitioner has not raised any other legal ground to quash the proceedings. Moreover, the submission of the learned Counsel for the petitioner is purely factual. The fact that the petitioner has handed over two cheques to the respondent is not in dispute. It is well settled that any factual dispute arising between the parties,



have to be resolved only at the time of trial. The question whether the petitioner is liable to pay the amount or not, cannot be decided here, as the petitioner himself admitted that he stood as a guarantor for his brother, in relation to the chit transaction that was made between his brother and the respondent.

8. Having regard to the settled position of law, this Court is not inclined to entertain these petitions and hence these petitions are dismissed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No. IV, Tirunelveli.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

CRL.O.P. (MD) Nos. 16622 and 16623 of 2017
05.12.2017

cmr
SDS/GT/SAR 3/28.12.2017/3P/3C