

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2018

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

CrI.O.P.No.10508 of 2018
and
CrI.MP.Nos.5387 & 5388 of 2018

1.M/s.Sri Rengas Avitta Garments,
Represented by its Partner,
R.Rajaram.
2.R.Rajaram
S/o.Sri Rangasamy
partner M/s. Sri Rengas Avitta Garments
k.Vadamadurai Post
Coimbatore. Petitioners

vs.

R.Indira
W/o. Rajesh, Proprietrix
M/s.Sri Ganapthy Tex
Rep by her Power Agent and Manager
M.Prakash
Having Office at No.59
Military Road, Ammapet Salem 636003.Respondent

Criminal Original Petition filed under Section 482 and 483
Cr.P.C. seeking to call for the records in STC.No.204 of 2018 on
the file of the learned Judicial Magistrate No.1, Salem, quash
the proceedings therein.

For petitioners : Mr.C.S.Dhanasekaran

O R D E R

This Criminal Original Petition has been filed to call for
the records in STC.No.204 of 2018 on the file of the Judicial
Magistrate Court No.1, Salem, and quash the proceedings therein.

2. For the sake of convenience, the petitioner and the
respondent will be referred to as the accused and the
complainant respectively.

3. It is the case of the complainant that she is engaged in the business of Yarn Dyed Woven Fabrics and she is having her office in Ammapet, Salem; that the accused purchased yarn to the tune of Rs.35,07,188/- from her and towards the said liability, the accused issued three cheques, which, when presented by the complainant, were returned on the ground of "payment stopped by the Drawer". The complainant issued a statutory notice dated 22.01.2018 to the accused and in response to the said notice, the accused issued a reply notice dated 07.02.2018, contending that the Yarn was of inferior quality and therefore, he had returned the products back to the complainant and had issued stop payment instructions to his bank.

4. However, the complainant has initiated a prosecution in STC.No.204 of 2018, before the Judicial Magistrate-I, Salem, under Section 138 of the Negotiable Instruments Act against the accused. The accused received the summons for his appearance before the trial Court on 12.04.2018 and immediately, he has filed the present quash petition on the ground that the complainant has initiated the present prosecution in Salem District, but the accused is admittedly from Coimbatore District and therefore, the trial Court should have conducted an enquiry in terms of Section 202(1) Cr.P.C. before issuing process and therefore, the proceedings in STC.No.204 of 2018 should be quashed.

5. Heard Mr.Dhanasekaran, learned counsel appearing for the accused.

6. Mr.Dhanasekaran, learned counsel appearing for the accused placed strong reliance upon three judgments of the Supreme Court in (i) Adalat Prasad Vs. Rooplal Jindal and Others reported in [2004(4) CTC 608], (ii) Vijay Dhanuka and Others Vs. Najima Mamta and Others [(2014) 14 SCC 638] and (iii) Abhijit Pawar Vs. Hemant Madhukar Nimbalkar and another [AIR 2017 SCC 299].

7. It is true, that under Section 202 Cr.P.C., the Magistrate shall postpone the issue of process against the accused, if the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction. In this case, the Magistrate is exercising his jurisdiction in Salem District and the accused, admittedly, is living in the neighbouring Coimbatore District. In the three judgments relied upon by Mr.Dhanasekaran, the Supreme Court has held that an enquiry under Section 202 Cr.P.C is necessary before issuing process. However, all the three cases relied upon by Mr.Dhanasekaran, relate to IPC offences. Of course, the procedure for trial of a private complaint for an IPC offence

cannot be different for a trial under Section 138 of the Negotiable Instruments Act. The amendment to Section 202 Cr.P.C was made by Central Act 25 of 2005 in order to curb the practice of private complaints being filed indiscriminately against persons living in far away places for the purpose of harassing them. In a case under Section 138 of the Negotiable Instruments Act, the accused and the complainant will most probably know each other. They should have had some transaction inter se and only then a cheque can be issued. Here, the complainant has alleged that the accused has purchased yarn from her and had not made payments. The accused is not a stranger to the complainant and he lives in the neighbouring District. Under the amended provisions of the Negotiable Instruments Act, the complaint can be filed within the jurisdiction of the Court where the Bank of the complainant is situate. In this case, the bank of the complainant is in Salem District and therefore, the complaint was filed within the jurisdictional Court. That apart, unlike prosecution of an offender for an IPC offence by way of a private complaint where pre-prosecution notice is not required, for maintaining a prosecution under Section 138 of the Negotiable Instruments Act, pre-prosecution notice is a sine qua non. In this case, the complainant has issued the notice and the accused has also replied to the notice. Therefore, the accused cannot plead that he had not anticipated the prosecution at all and that he was surprised on receiving the summons from the Magistrate.

8. Considering the facts and circumstances of the present case, the complaint cannot be quashed on the failure of the Magistrate to conduct Section 202(1) Cr.P.C. enquiry, before issuing process. After all, procedural law is a hand maid of justice and breach of a procedural aspect cannot ipso facto vitiate the prosecution. Hence, this ground is rejected as being devoid of merits.

9. Mr.Dhanasekaran, learned counsel for the accused placed strong reliance upon the judgment of the Supreme Court in Adalat Prasad (supra), by contending that the complainant must be examined under Section 200 Cr.P.C and the proof affidavit cannot be accepted. He also submitted that under Section 273 Cr.P.C, the evidence of the witness should be recorded in the presence of the accused. It is true that in paragraph Nos. 13 and 15 of the above said judgment, the Supreme Court has held so. However, in Indian Bank Association Vs. Union of India [(2014) 5 SCC 590] and Meters and Instruments Private Limited and ors. Vs. Kanchan Mehta [(2017) 6 CTC 66], the Supreme Court has issued detailed guidelines as to how a complaint under Section 138 of the Negotiable Instruments Act should be dealt with by the trial Court in which, the Supreme Court has very clearly held that the complainant can file a proof affidavit and on the strength of

the proof affidavit, the complainant can be cross examined by the accused. These Judgments have been circulated to all the Magistrates in the State. Therefore, the Trial Magistrate is bound to follow the Supreme Court guidelines, failing which, it would result in contempt of Court. That apart, Section 145 of the Negotiable Instruments Act permits evidence on affidavit. Hence, the provisions of the Special Act will over rule the general procedure in Section 273 Cr.P.C. Hence, these grounds also fail.

10. At this juncture, Mr.Dhanasekaran, the learned counsel requested this Court that the presence of the petitioner before the trial Court may be dispensed with. Accepting his submission, the petitioner is directed to appear before the trial Court on the next hearing date and on his appearance, he shall be released on bail under Section 436 Cr.P.C on he executing a bond of Rs.10,000/- with two sureties on the same day. Thereafter, he is directed to appear before the trial Court for receiving the papers under Section 207 Cr.PC, for questioning under Section 251 Cr.P.C., at the time of questioning under Section 313 Cr.P.C. and at the time of passing judgment. The petitioner shall file an affidavit of undertaking, before the Trial Court that he will not dispute his identity; that the counsel named by him in the affidavit will cross-examine the prosecution witnesses on the day they are examined-in-chief, as directed by the Supreme Court in Vinoth Kumar vs. State of Punjab [2015(1) MLJ (Cr1) 288] and that he will not adopt dilatory tactics. If he adopts any dilatory tactics, the trial Court can insist for the presence of the accused by informing the counsel nominated by him. If the accused absconds, a fresh FIR can be registered against him under Section 229-A IPC.

11.The Criminal Original Petition stands dismissed in the above terms. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

lok

To

1. The Judicial Magistrate No.1,
Salem.

2. The Chief Judicial Magistrate Salem.

+lcc to Mr.C.S.Dhanasekaran, Advocate, S.R.No.24788

Crl.O.P.No.10508 of 2018 and
Crl.MP.Nos.5387 & 5388 of 2018

NRL (CO)
RRK(10/04/2018)



WEB COPY