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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2018

CORAM

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

Crl.O.P. No.15502 of 2018

and

Crl.MP.Nos.7905 & 7906 of 2018

1.M/s.SVK Enterprises

Rep. by its Partners

N.Shanmugha Sundaram

Udhayam Classic Park

#25, Flat A, 79th Street, 18th Avenue, Ashok Nagar,
Chennai-600 083.

2.N.Shanmugha Sundaram

Partner, M/s.SVK Enterprises

Udhayam Classic Park

#25, Flat A, 79th Street, 18th Avenue, Ashok Nagar,
Chennai-600 083.

3.Vincent Ferro Babu

Partner, M/s.SVK Enterprises

Udhayam Classic Park

#25, Flat A, 79th Street, 18th Avenue, Ashok Nagar,
Chennai-600 083.

4.Kartik

Partner, M/s.SVK Enterprises

Udhayam Classic Park

#25, Flat A, 79th Street, 18th Avenue, Ashok Nagar,
Chennai-600 083.

...Petitioners

vs.

Vinitha Associates Ltd.,

Rep. by its Authorized Representative

N.Chandrasekar, S/o.Nagarajan

Board Resolution dated 28.02.2017

Having its Registered Office at

No.8/1, Cenotaph Road, 1st Lane,

Teynampet, Chennai-600 018.

...Respondent

Criminal Original Petition filed under Section 482, Cr.P.C. to
call for the records in C.C.No.702 of 2018 on the file of the
III Fast Track Court, Saidapet and quash the same.

For petitioner : Mrs.R.Saranya



O R D E R

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This Criminal Original Petition has been filed to call for the records in C.C.No.702 of 2018 on the file of the III Fast Track Court, Saidapet and quash the same.

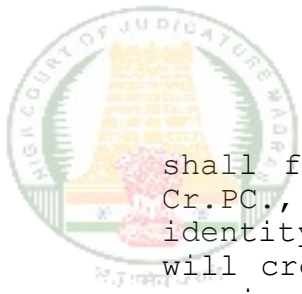
2. For the sake of convenience, the petitioners and the respondent will be referred to as the accused and the complainant respectively.

3. The accused are facing prosecution in C.C.No.702 of 2018 before the Fast Track Court No.III, Saidapet, for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short "the NI Act"), for quashing which, this petition has been filed.

4. Heard Mrs.R.Saranya, learned counsel for the accused, who submitted that the accused had borrowed only Rs.39 Lakhs in all and that the complaint has been filed falsely. She also contended that on the complaint given by Shanmuga Sundaram (A2) against Mahalaxmi & Sons and Vinitha Associates, based on which, a case in Crime No.206 of 2018 has been registered on 15.03.2018 under Section 4 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 and 294(b) and 506(ii) IPC and the investigation is pending. She also submitted that the result of the investigation will have a bearing on the criminal prosecution under Section 138 of the NI Act.

5. In the opinion of this Court, the accused have not even sent a reply to the statutory notice issued by the complainant. After issuance of the statutory notice, Shanmuga Sundaram (A2) has given a complaint, based on which, a case in Crime No.206 of 2018 has been registered. Since the complaint discloses necessary ingredients prima facie, the same cannot be quashed in the light of the law laid down by the Supreme Court in S.Krishnamoorthy V. Chellammal 2015 (4) Scale 371.

6. In the result, this petition is dismissed with liberty to the accused to raise all the points before the trial Court. Shanmuga Sundaram (A2), Vincent Ferro Babu (A3) and Kartik (A4) are directed to appear before the trial Court and execute a bond for Rs.10,000/- each without sureties under Section 88 Cr.P.C., Thereafter, the presence of Vincent Ferro Babu (A3) and Kartik (A4) are dispensed with on a condition that they shall appear before the trial Court for receiving the complaint, 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. For the other hearings, Vincent Ferro Babu (A3) and Kartik (A4)



shall file a petition before the trial Court under Section 317 Cr.PC., giving an undertaking that they will not dispute their identity and that the counsel named by them in the affidavit will cross-examine the prosecution witnesses on the day they are examined-in-chief, as held by the Supreme Court in Vinod Kumar vs. State of Punjab [2015(1) MLJ (Cr1) 288]. On such a petition being filed, the trial Court may liberally consider the same. If the accused adopt any dilatory tactics, it is open to the trial Court to insist upon their presence and remand them to custody as laid down by the Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh [JT 2001 (4) SC 319]. If the accused abscond, the trial Court shall direct registration of an FIR against them under Section 229-A IPC. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The Fast Track Court No.III,
Saidapet, Chennai.

+1 cc to Mr.Anandharaja Advocate sr 38182

Cr1.O.P. No.15502 of 2018

aa25/06/2018