

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2018

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.OP.Nos.22492 & 22493 of 2018
and Crl.MP.Nos.12453 to 12456 of 2018

1. M/s.Sri Rengas Avitta Garments
Represented by its Partner,
R.Rajaram, aged about 67 years.
2. R.Rajaram,
S/o. Sri Rangasamy,
Partner, M/s.Sri Rengas Avitta Garments
Door No.188A, SF No.35/1, 35/2 35/3,
Palanigounden Pudur,
K.Vadamadurai Post,
Coimbatore - 641 017. Petitioners in both Crl.OPs.

Vs.

Mrs.R.Indira, Aged about 39 years,
W/o.M.Rajesh, Proprietrix,
M/s.Sri Ganapathy Tex,
Rep. by her Power Agent and Manager
M.Prakash, aged 31 years,
S/o. Manickam
Having office at No.59,
Military Road, Ammapet,
Salem - 636 003. Respondent in both Crl.OPs.

COMMON PRAYER: Criminal Original Petitions filed under Section 482 Cr.P.C to call for the records in S.T.C.Nos.908 & 909 of 2018 on the file of Learned Judicial Magistrate No.5, Salem, quash the proceedings therein.

For Petitioners : Mr.C.S.Dhanasekaran
[in both Crl.OPs]

For Respondent : Mr.R.Nalliyappan
[in both Crl.OPs.]

ORDER

These Criminal Original Petitions have been filed seeking to quash the proceedings initiated by the respondent under Section 138 of the Negotiable Instruments Act.

2. The learned counsel for the petitioners would submit that admittedly in these cases, the petitioners are beyond the jurisdiction of the Court below and the Court below at the time of taking cognizance and issuing summons to the petitioners, did not satisfy the requirements of amended provisions under Section 202 of Cr.P.C. In order to substantiate his submissions, the learned counsel relied upon the Judgment of the Hon'ble Supreme Court in Aroon Poorie Vs. Mahendra Singh Dhoni reported in (2017) 7 SCC 767.

3. The learned counsel for the respondent would submit that in these cases, learned Magistrate did conduct an inquiry and examined the complainant and only thereafter, had directed the issuance of process to the petitioners. Therefore, the learned counsel would submit that the Court below had satisfied itself regarding the prima facie case made out by the respondent and thereafter had issued summons to the petitioners. Therefore, the requirements of Section 202 of Cr.P.C. has been satisfied.

4. This Court has carefully considered the submissions made on either side.

5. It will be apposite to extract the order passed by the Court below while taking cognizance and issuing summons to the petitioners.

'Perused Complaint, Proof Affidavit and material Records. Prima facie case of offence U/s. 141/142 r/w 138 of Negotiable Instruments Act 1881 (Amended) is made out. Hence, the complaint is ordered to be taken on file U/s. 138 of Negotiable Instruments Act and posted to 12.06.2018 issue summons to accused on PPF Call on 12.06.2018.'

6. From the above order, it can be seen that the learned Magistrate, has not followed the mandatory provisions under Section 202(1) of Cr.P.C., by specifically recording his satisfaction to issue process to the petitioners, who is living beyond the jurisdiction of the Court. It will be relevant to make a reference to the Judgment of the Hon'ble Supreme Court in Udai Shankar Awasthi Vs. State of U.P., (2013) 2 SCC 435 and in Aroon Poorie Vs. Mahendra Singh Dhoni reported in (2017) 7 SCC 767.

7. In the considered view of this Court, the learned Judicial Magistrate did not satisfy the mandatory requirements under Section 202(1) of Cr.P.C. Therefore, this Court has to necessarily quash the cognizance taken by the Court below and remand the matter back to the learned Judicial Magistrate, in order to properly follow the procedure contemplated as under Section 202 of Cr.P.C.

8. In the result, the cognizance taken by the Court below in S.T.C.Nos. 908 & 909 of 2018 on the file of the learned Judicial Magistrate No.5, Salem are hereby quashed and the matter is remitted to the Court below to properly follow the procedure under Section 202 of Cr.P.C and thereafter, proceed with the cases in accordance with law.

9. It is made clear, that the learned Judicial Magistrate shall complete the entire proceedings within a period of four months from the date of receipt of a copy of this order.

10. Accordingly, these criminal original petitions are allowed with the above directions. Consequently connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

msrm/rka

To

The Learned Judicial Magistrate No.5,
Salem.

+1 CC to M/s.C.S.Dhanasekaran, Advocate, SR No.87388

+1 CC to M/s.R.Nalliyappan, Advocate, SR No.87043

ssm(19/12/18)

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