

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.O.P.No.13399 of 2010
and
M.P.Nos.1 and 2 of 2010

1. R.Vasandharajan
2. M.Suganthi Rani

... Petitioners/Accused 1 & 2

- Vs -

T.C.Sivakumar

... Respondent/Complainant

Prayer : This Criminal Original Petition is filed under Section 482 of Cr.P.C., against the complaint in S.T.C.No.6119/2009 on the file of the District Munsif-cum-Judicial Magistrate, Perundurai.

For Petitioners : No Appearance

ORDER

There is no representation for the petitioners on 04.07.2018. Therefore, the case was posted today under the caption for dismissal. Even today, there is no representation for the petitioners.

2. The petitioners are the accused in S.T.C.No.6119 of 2009, on the file of the District Munsif cum Judicial Magistrate, Perundurai. The respondent has filed a private complaint under Section 138 of Negotiable Instruments Act. The contention of the petitioners is that the 1st petitioner/Husband working as a Head Master and the 2nd petitioner/Wife is working as a Teacher. The petitioners, during the year 2006, had purchased furniture from one S.Rangaraj to the tune of Rs.43,740/- and the payment has to be made in E.M.I., within a period of 3 years for which, they had handed over 30 signed cheques. Sofar using this cheque for an amount of Rs.38,740/-, they had been repaid from 03.10.2007 to 08.05.2008. The balance amount to be paid is only Rs.5,000/-. Despite several reminders, the said Rangaraj had not return the Blank cheques to the petitioners, for which, a legal notice was sent to the said Rangaraj dated 18.10.2008, requesting him to return the cheques.

Though notice has been received on 22.10.2008 by the said Rangaraj, sofar he had not returned the cheques.

3. Thereafter, the petitioners have filed a civil suit for declaration that the loan amount was discharged and sought mandatory injunction to return the cheques before the District Munsif Court, Erode on 16.04.2009, and the same is pending. To the shock and surprise of the petitioners, they received a notice dated 17.07.2009 in which, the respondent claimed that the petitioners gave the cheque for Rs.3,50,000/- and it was dis-honoured on the ground of ''account closed''.

4. Immediately, the petitioners had sent a reply dated 25.07.2009 stating that they have filed a civil suit against Rangaraj before the District Munsif Court, Erode for return of the cheques, and one such cheque pertains to this case. The respondent had not chosen to send any reply. Further, the petitioners submitted that they are closed HDFC account, in October 2008 and had sent legal notice on 18.10.2008 to the said Rangaraj requesting him to return the cheques including the cheque pertaining to this case and a suit has been filed by the petitioners on 16.04.2009. In such circumstances, the respondent, who is a stranger to the petitioners, they have no transaction with the respondent and hence, the cheque has not been issued to the respondent in enforcement of any legal enforceable debt.

5. Further, the contention of the petitioners is that there is no evidence in the plaint that on the request of the petitioners, the cheque was presented for encashment. Further, the lower court had failed to take note that the respondent had filed the case against the petitioners under Section 138 of Negotiable Instruments Act, with an intention to harass the petitioners.

6. On going through the petition, the notice taken to the respondent shows that service is still awaited. Private notice sought is ordered. The petitioners have not taken any steps for the same. Further, on perusal of the petition and the records, this Court feels that the presence of the respondent is not necessary. Hence, based on the petition and documents proceed further.

7. It can be seen that there is no case made out by the petitioners for quashing the Complaint. Further, the respondent had filed the complaint following the procedure and statutory requirement as per law. Hence, quash petition filed by the petitioners is dismissed and the trial court is directed to conduct trial expeditiously, taking into consideration the fact that the case is pending from the year 2009, preferably within a

period of three months from the date of receipt of a copy of this order.

8. With the above, nothing survives in this Petition for further adjudication. Hence, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS V)

//True copy//

Sub Assistant Registrar

ssn

To

1. The District Munsif-cum-Judicial Magistrate,
Perundurai.
2. The Public Prosecutor,
High Court, Madras.

Cr1.O.P.No.13399 of 2010
and
M.P.Nos.1 and 2 of 2010

SVI (CO)
GN(23/07/2018)

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