

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2018

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

CRL.O.P.No.23382 of 2018

and

Crl.M.P.No.13088 of 2018

1.STR Food Products,
No.1/130, Lakshmi Industrial Estate,
Kundrathur Main Road,
Kovur, Chennai - 600 128.
Represented by its Partner Mrs.Vidhya Dhanalakshmi.

2.R.DeepikaPetitioners

Versus

Aarkay Sai Enterprises,
No.54, F-1, Devi Arcade,
Sarangapani Street, Krishnapuram,
Ambattur, Chennai - 600 053.
Represented by its Proprietor
Mrs.J.Priya.

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records of complaint in S.T.C No.347 of 2018, pending on the file of the Fast Track Court, Ambattur, Chennai, as filed under Section 138 of the Negotiable Instrument Act, 1881, by the respondent and may quash the same.

For Petitioners : Mr.R.Perumal Raj

For Respondent : Mr.Mohammed Mudassir Ali

O R D E R

This petition has been filed seeking to quash the proceedings in S.T.C No.347 of 2018, pending on the file of the Fast Track Court, Ambattur.

2.The learned counsel for the petitioners would submit that as per the averments made in the complaint, the total cheque amount is sum of Rs.3,00,000/- (Rupees three lakhs only) and out of the same, the petitioner has already paid a sum of Rs.2,40,000/- (Rupees two lakh forty thousand only). Therefore, the learned counsel would submit that the complaint itself is not maintainable, since the respondent is claiming for a total amount of Rs.3,00,000/- (Rupees three lakhs only) as against Rs.60,000/- (Rupees sixty thousand only), which is due and payable on the part of the petitioners. Therefore, according to the learned counsel for the petitioner, the complaint itself does not fulfill the requirements of Section 138 of the Negotiable Instruments Act.

3.The learned counsel for the respondent would submit that the respondent does not attempt to the receipt of a sum of Rs.2,40,000/- (Rupees two lakh forty thousand only) as claimed by the petitioner. That apart, the learned counsel would submit that the issue that has been raised by the petitioner is purely factual in nature and this Court cannot get into the factual aspect in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure.

4.This Court has carefully considering the submission made on either side.

5.It is clear from the stand taken by the petitioners and the respondent that there is a dispute with regard to the actual amount that is payable by the petitioner to the respondent. Whether the cheque that has been deposited by the respondent, fulfills the requirements of Section 138 of the Negotiable Instruments Act, has to be decided only by the Court below in the course of the proceedings. How much amount has been paid by the petitioner to the respondent and whether major portion of the cheque amount has already been paid by the petitioner, are all things which needs to be established before the Court below in the course of trial. This Court cannot undertake this exercise, since it falls within realm of appreciation of Evidence. Therefore, this Court does not want to interfere that the proceedings before the Court below, at this stage.

6.The learned counsel for the petitioner requested this Court to dispense with the presence of the petitioner. In the facts and circumstances of the case, the presence of the petitioner shall be dispensed with by the Court below and the petitioner shall be represented by her counsel. The petitioner shall be present before the Court at the time of questioning under Section 313 of the Code of Criminal Procedure and at the

time of passing of the Judgment. The counsel representing the petitioner shall cross-examine the witness on the very same day when they are examined in chief. The petitioner shall not dispute the identity of the witnesses.

7.It is left open to the petitioner to raise all the grounds before the Court below and the Court below shall consider the same on its own merits and in accordance with law.

8.This Criminal Original Petition stands disposed of with the directions to the Court below to complete the proceedings within a period of four months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vv2/ub

To

1.The Fast Track Court,
Ambattur, Chennai.

2.The Public Prosecutor,
High Court, Madras.

+2 cc to M/s.Kanchankar, Advocate Sr.NO.77111

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CSL/20.11.2018

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