

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.10.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.Nos.24360, 24366, 24368, 24369, 24372,
24374, 24377, 24379, 24380, 24386 and 24387 of 2018
and CRL.M.P.Nos.13814 and 13816 to 13836 of 2018

Crl.O.P.No.24360 of 2018

1.M/s.Vasan Healthcare Pvt. Ltd.,
Rep. By its Chairman & Managing Director,
Arun Arunachalam Murugiah,
No.70, Dr.Radhakrishnan Salai,
Westminister Complex, Mylapore,
Chennai 600 004.

2.Mr.Arun Arunachalam Murugiah,
Chairman & Managing Director,
M/s.Vasan Healthcare Pvt. Ltd.,
No.1, Mahizhamboo Salai,
Annamalai Nagar,
Trichy 620 018. ... Petitioners

Vs

M/s.Reliance Capital Ltd.,
Rep. By its Authorized/Power of Attorney Agent
R.Kumaran, Having office at
Reliance Centre, 6th Floor,
South Wing,
Office Western Express High Way, Prabhat Colony,
Santacruz (East), Mumbai 400 055. .. Respondent

Prayer in Crl.O.P.No.24360, 24366, 24368, 24369, 24372, 24374,
24377, 24379, 24380, 24386, 24387 of 2018: Criminal Original
Petition filed under Section 482 Cr.P.C., to call for the
records relating to the C.C.No.4416 of 2017, C.C.No.4419 of
2017, C.C.No.4427 of 2017, C.C.No.4417 of 2017, C.C.No.4426 of
2017, C.C.No.4423 of 2017, C.C.No.4425 of 2017, C.C.No.4424 of
2017, C.C.No.4418 of 2017, C.C.No.4421 of 2017, C.C.No.4420 of
2017 respectively pending on the file of the learned III Fast
Tract Metropolitan Magistrate at Saidapet, Chennai and quash
the same.

For Petitioners : Mr.Ashok Kumar.D

C O M M O N O R D E R

For the sake of convenience, the parties will be
referred to as the complainant and the accused.

2.It is the case of the complainant that the accused had obtained loan of various amounts from the complainant and had executed deed of hypothecation towards the loan amounts and thereafter, the accused had defaulted in repaying the amount. In discharge of the liability, the accused has given the impugned cheques which when presented by the complainant were dishonoured. The complainant issued statutory notices to the accused which were returned with an endorsement as "left". Since the amounts were not paid by the accused, complainant has initiated the above prosecutions, for quashing which the accused are before this Court.

3.Heard Mr.Ashok Kumar.D, learned counsel appearing for the accused who made following submissions:

i. Though the complainant and the accused had entered into the hypothecation agreements, yet the complainant had not actually disbursed the loan;

ii. The impugned cheques were given only as a security at the time when the hypothecation agreements were entered into;

iii. The complainant initiated bankruptcy proceedings against the accused before the National Company Law Tribunal, Chennai and when the accused entered appearance and contended that there was no amount due to the complainant, the same was withdrawn and thereafter, the present prosecutions have been filed.

Hence, he submitted that all these prosecutions are an abuse of process of law and required to be quashed.

4.On a reading of the complaint, it is seen that the complainant has alleged that the accused had obtained loans of various amounts as set out in the respective complaints by entering into hypothecation agreements on 21.01.2016. Whether the amounts were actually disbursed to the accused or not is a question of fact which cannot be decided in a quash application. It is for the complainant to adduce evidence in the witness box to show that the accused had obtained loans. Merely on the averments in the quash application, this Court cannot give a finding that the amounts were not actually disbursed. As regards the contention that the cheques were issued for security purpose, the Supreme Court in S.Krishnamoorthy Vs. Chellammal 2015 (4) Scale 371 has held that the same cannot be looked into in a quash application. As regards the withdrawal of the bankruptcy proceedings, the same cannot lead to the inference that there was no amount due from the accused to the complainant. Since disputed questions of fact cannot be gone into in a quash application, these petitions are closed with liberty to the petitioners to raise all the points before the Trial Court.

5.Mr.Ashok Kumar.D submitted that the presence of 2nd petitioner before the Trial Court may be dispensed with.

6. Accepting the submission, the 2nd petitioner is directed to appear before the Trial Court within a period of two weeks from the date of receipt of a copy of this order and file an application under Section 436 Cr.P.C for bail. He shall be released on bail in all the cases on the same day, on he executing a bond for a sum of Rs.10,000/- with two sureties (common sureties). Thereafter, the 2nd petitioner representing himself and the 1st petitioner shall appear for the hearings under Sections 251, 313 Cr.P.C and on the date of judgment. For other hearings, if the accused files an application under Section 317 of Cr.P.C., undertaking that he will not dispute his identity and that his counsel will cross-examine the prosecution witnesses on the day they are examined in-chief, without adopting any dilatory tactics, his presence can be dispensed with. If the accused adopts any dilatory tactics, the Trial Court shall insist upon the presence of the accused. If the accused absconds, a fresh FIR can be registered against them under Section 229-A of IPC.

In the light of the above, these petitions are closed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The III Fast Track Metropolitan Magistrate
Chennai

2.The Public Prosecutor,
High Court, Madras.

+11cc to Mr.D.Ashokkumar, Advocate SR.NO.72146, 72147, 72148,
72149, 72150, 72151, 72152, 72153, 72154, 72155

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PP (CO)

sm:12.11.2018