



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2018

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.Nos.27368, 27372 & 27374 of 2018

and

Crl.M.P.Nos.15780 &15781,15784 & 15785 and 15787&15788 of 2018

1.M/s.Kasim Coal and Logistics(P) Ltd.,
Rep by Mrs.Kamila Banu, (36 years)
Director & Authorized Signatory.

2.Mrs.Kamila Banu, (36 years)
Director & Authorized Signatory

... Petitioners
in all 3 crl.O.Ps./Accused

Vs.

Mr.Vikram Agarwal
S/o.Banwarilal (40 years) ... Respondent
in all 3 crl.O.Ps./Complainant

COMMON PRAYER: Criminal Original Petitions filed under Section 482 Cr.P.C, to call for the entire records from the file of Learned Fast Track Court-IV, Metropolitan Magistrate at George Town in C.C.Nos.1250 of 2018, 1794 of 2018 & 1440 of 2018 and quash the same.

For Petitioner : Mr.P.Sidharthan

For Respondent :

O R D E R

These Criminal Original Petitions have been filed seeking to quash the proceedings in C.C.Nos.1250 of 2018, 1794 of 2018 & 1440 of 2018, pending on the file of the Learned Metropolitan Magistrate, Fast Track Court-IV, George Town, Chennai.

2.The learned counsel for the petitioner would submit that the respondent had supplied coal. In the course of business, the petitioner had given certain cheques to the respondent as security. The learned counsel would further submit that the coal that was supplied by the respondent was of poor quality and the



petitioners started getting complaints from various persons to whom the petitioner in turn had made the supply. Therefore, the petitioner had communicated to the respondent about the poor quality of the coal and also had requested the respondent not to present the cheques.

3.The learned counsel for the petitioner would submit that the petitioner also gave a letter to the concerned bank requesting not to honour the cheques if they are presented by the respondent. The learned counsel further submitted that there was no existing debt or liability on the date when the cheques were presented and the cheques which were given as a security has been misused by the respondent and therefore the complaint that is filed by the respondent under Section 138 of the Negotiable Instruments Act, is an abuse of process of Court, which requires interference of this Court.

4.This Court is of considered view that the grounds raised by the learned counsel for the petitioners are factual in nature. The materials that have been relied upon by the learned counsel for the petitioners are defence materials, which cannot be taken into consideration at the time of considering a quash petition. The existence of the debt or liability or the misuse of the cheques given as security are all issues, which has to be considered in the course of the proceedings and it requires appreciation of evidence. This Court can not undertake that exercise while exercising its jurisdiction under Section 482 of Cr.P.C.

5. 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. This Court is not inclined to interfere with proceedings at this stage.

6.The learned counsel for the Petitioner would submit that the presence of the 2nd petitioner shall be dispensed with. Taking into consideration the facts and circumstances of the cases, this Court is inclined to dispense with the presence of the 2nd petitioner. The 2nd petitioner shall be represented by a counsel and shall be present before the Court at the time of questioning under Section 313 of Cr.P.C. and at the time of passing the judgment. The counsel representing the 2nd petitioner shall cross examine the witnesses on the same day they are examined in Chief. The 2nd petitioner shall not dispute the identity of any witnesses.

7. This Criminal Original Petition is disposed of with the direction to the Court below to complete the proceedings in C.C.Nos.1250 of 2018, 1794 of 2018 & 1440 of 2018 , within three



months from the date of receipt of the copy of this order and report compliance before this Court after the completion of the proceedings. Consequently, Connected Miscellaneous Petitions are closed.

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Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The Fast Track Court-IV,
Metropolitan Magistrate at George Town,
Chennai.

+3cc to Mr.P.Sidharthan, Advocate Sr.80572, 80571, 80570

CRL.O.P.Nos.27368, 27372 & 27374 of 2018
and
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