

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2018

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.No.27080 of 2018

and

Crl.M.P.No.15626 of 2018

1.Viswanathan,M/44
S/o.Arthanari

2.Palanisamy, M/53
S/o.Irusa Gounder

.... Petitioners

Vs.

1.The Deputy Superintendent of Police,
District crime Branch,
Villupuram.

2.Periyasamy
S/o.Thangavel

....Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, seeking to call the entire records concerned in summon issued by the 1st respondent to the petitioners in Ref. No.P2/37211/3801/18, dated 03.09.2018 and quash the same.

For Petitioners : Mr.Prakasam.C

For Respondents : Mr.M.Mohamed Riyaz

Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed challenging the summons issued by the first respondent directing the petitioners to be present for an enquiry.

2.The learned counsel for the petitioner would submit that the second respondent has borrowed monies from several persons including the petitioners. The second respondent has also given a cheque towards the amount borrowed from the petitioners and the cheque was dis-honoured and a complaint has been filed under Section 138 of Negotiable Instruments Act against the second respondent, which is pending in S.T.C.No.1493 of 2018, on the file of the learned Judicial Magistrate-IV, Salem. The learned counsel would further submit that the second respondent in order to put pressure against the petitioners to withdraw the complaint filed under Section 138 of N.I.Act has given a false complaint before the first respondent and the first respondent is continuously

harassing the petitioners to attend the enquiry and in the enquiry, the petitioner is being pressurized to withdraw the complaint filed against the second respondent. Therefore, left with no other option, the petitioners have approached this Court seeking to withdraw the summons.

3.It is seen from records that there is a complaint given by the second respondent against the petitioners in Complaint No.P2/37211/3801/18 dated 03.09.2018 and the first respondent is calling the petitioners for enquiry based on the complaint. This process of calling for enquiry has been going on from the month of September 2018.

4.Therefore, the petitioner is directed to cooperate with the police for enquiry and at the time of conducting of the enquiry, the petitioner shall not be harassed by the police. The police cannot call the petitioner on a regular basis in the guise of enquiry without even registering an FIR and the Hon'ble Supreme Court of India in the case of Lalitha Kumari Vs. Government of Uttar Pradesh reported in 2013 (6) CTC 353 has enumerated the nature of cases, where preliminary enquiry can be conducted and has also restricted the period, for which preliminary enquiry can be conducted. During the course of enquiry, if any cognizable offence is made out, second respondent is free to register an FIR and this order shall not be a shield for the petitioner against the respondent proceeding to take action in accordance with law.

5. The Criminal Original Petition is disposed of with the above directions. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

rm/rri

To

1. The Judicial Magistrate IV, Salem.

2.The Deputy Superintendent of Police,
District crime Branch, Villupuram.

3. The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr.C. Prakasam, Advocate sr.79878

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VSNII(CO)

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EU(14/12/2018)