



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.10.2018

WEB COPY

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD).Nos.12600 & 12601 of 2016

and

Crl.M.P.(MD).Nos.5931 to 5933 & 6019 of 2016

V.Sathishkumar ...Petitioner / Accused No.2
in Crl.O.P.(MD).No.12600 of 2016

1.J.Surya Vadhana
2.Saisha Agency (madurai)
Through its Partners,
J.Surya Vadhana,
V.Sathish Kumar
Having Office at
Stanis Pandi Complex,
No.21, Bye-pass Road,
Opposite to Vajra Apartments,
Madurai-625 010. ...Petitioners / Accused Nos.1 & 3
in Crl.O.P.(MD).No.12601 of 2016

Vs.

P.Balamurugan ... Respondent / Complainant
(In Both Petitions)

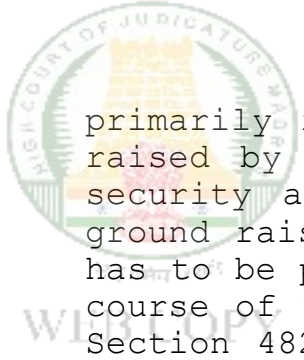
COMMON PRAYER: Criminal Original Petitions filed under Section 482 of the Criminal Procedure Code, to call for the records relating to the case in ST.C.No.76 of 2016 on the file of the Hon'ble Court of Judicial Magistrate No.I, Tirunelveli and quash the same.

For Petitioners : Mr.B.Saravanan
For Respondent : No Appearance
(In both Petitions)

COMMON ORDER

These Criminal Original Petitions have been filed challenging the proceedings initiated under Section 138 of the Negotiable Instrument Act by the respondent, pending in S.T.C.No.76 of 2016, on the file of the learned Judicial Magistrate No.1, Tirunelveli.

2.The learned counsel appearing for the petitioners would submit that totally there are three accused persons added in this criminal complaint. The first and second accused persons are added in their capacity as partners and the third accused person is the partnership firm. The learned counsel appearing for the petitioners



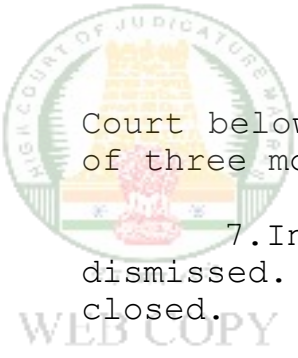
primarily raised two grounds before this Court. The first ground raised by the petitioner is that the cheque was given only as a security and the same has been misused by the respondent. This ground raised by the petitioners is factual in nature and the same has to be put on test in evidence before the Court below during the course of trial. This Court in exercise of its jurisdiction under Section 482 Cr.P.C, cannot consider this issue. The second ground that has been raised by the petitioners is that V.Sathish Kumar, does not participate in the day to day affairs of the business and he has been un-necessarily arrayed as an accused in the complaint and in order to substantiate this submission, the learned counsel appearing for the petitioners brought to the notice of this Court that J.Surya Vadhana, has signed the cheque in her capacity as the partner of the third accused firm. Therefore, the learned counsel appearing for the petitioners would submit that while adding V.Sathish Kumar as an accused, there should be necessary averments made in a complaint in order to justify his addition as an accused in this case, by virtue of Section 141 of the Negotiable Instrument Act.

3.This Court has carefully considered the second submission made by the learned counsel appearing for the petitioners. It is seen from the complaint that V.Sathish Kumar and J.Surya vadhana are husband and wife, who are the partners of the third accused / partnership firm.

4.In the complaint, a specific averment has been made to the effect that the cheque was issued by J.Surya Vadhana with the consent and knowledge of V.Sathishkumar and therefore, the said V.Sathishkumar has also been added as an accused in this case, in his capacity as a partner of the firm. It is enough to sustain the complaint with this averment. Insofar as the involvement of the said V.Sathishkumar in the day to day affairs of the partnership firm, the same has to be only established before the Court below in the course of trial. This Court cannot come to any conclusion or give any finding in this regard at this juncture.

5.Therefore, this Court is of the considered view that the grounds taken by the petitioners is not sustainable. These grounds will have to be raised before the Court below in the course of the proceedings and the Court below can consider the same on its own merits and in accordance with law.

6.The learned counsel appearing for the petitioners would submit that the presence of J.Surya Vadhana may be dispensed with during the proceedings. Accepting the submissions, the presence of J.Surya Vadhana shall be dispensed with before the Court below and she shall be represented by a counsel. She shall be present before the Court below at the time of 313 questioning and at the time of passing of judgment. The counsel representing her shall cross-examine the witnesses on the same day they are examined in chief and she shall not question the identity of any of the witnesses. The



Court below is directed to complete the proceedings within a period of three months from the date of receipt of a copy of this order.

7. In the result, these Criminal Original Petitions are dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar (CS-II)

tsg

To

The Judicial Magistrate No.I, Tirunelveli.

+1cc to Mr.B.Saravanan, Advocate in SR No.91289

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**Crl.O.P. (MD) .Nos.12600 &
12601 of 2016**

NM/SV/SAR II/26.11.18/3P/4C.