



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

CrI.O.P. (MD) .Nos.13667 to 13672 of 2018

and

CrI.M.P. (MD) .No.6158 to 6169 of 2018

S.Shakila

...Petitioner/Accused in all cases

Vs.

M/s. Jupietar Match Industries,

Representated by its Partner,

N.Radhakrishnan

...Respondent/Complainant in all cases

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of the Criminal Procedure Code, to call for the records pertaining to C.C.Nos.37, 38, 39, 40, 41 and 36 of 2018, on the file of the learned Judicial Magistrate No.1, Kovilpatti, Thoothukudi District and quash the same.

For Petitioner

: Mr.V.Rajiv Rufus

For Respondent

: M/s.Lakshmigopinathan

(In all Petitions)

COMMON ORDER

These Criminal Original Petitions have been filed to quash the proceedings initiated against the petitioner for the offence under Section 138 of the Negotiable Instruments Act, 1881.

2.The learned counsel appearing for the petitioner brought to the notice of this Court several documents in order to substantiate the case of the petitioner that the respondent has already encashed eight containers belonging to the petitioners by supplying to the customers in Nigeria. Therefore, the petitioner is not liable to make any payment to the respondent and in fact, it is the respondent, who has to settle the amount to the petitioner. The learned counsel appearing for the petitioner would further submit that a complaint has been given against the respondent and appropriate orders have been passed by the learned Judicial Magistrate, under Section 156 (3) Cr.P.C. directing the Police to register a complaint.

3.The learned counsel appearing for the respondent would submit that the material which have been relied on by the learned counsel appearing for the petitioner cannot be looked into by this Court at the stage of considering the Quash Petition under Section 482 Cr.P.C. The learned counsel would further submit that this



Court can only look into the averments made in the complaint and also the documents filed along with the complaint and nothing more. The learned counsel would further submit that all these documents relied upon by the petitioner has to be marked before the Court below at the time of trial. Therefore, the learned counsel would submit that there are no merits in this Criminal Original Petition and the same has to be dismissed.

4. This Court has carefully considered the submissions made on either side. It is the case of the petitioner that the petitioner has been cheated and the respondent, who promised to send the containers to the consignees at Nigeria, has already received the amount for the supply and the cheques that were given as security has been misused and false complaints have been made against the petitioner before the Court below.

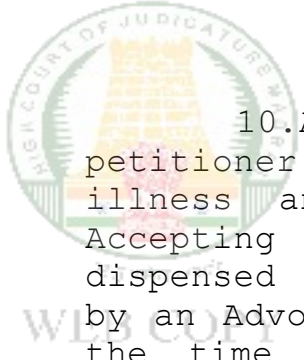
5. In order to substantiate the same, the learned counsel appearing for the petitioner brought to the notice of this Court, several letters that were exchanged between the parties.

6. This Court sitting in 482 jurisdiction can only look into the *prima facie* allegations made in the complaint along with the documents relied upon in the complaint. The materials relied upon by the petitioner cannot be looked into by this Court, at this stage, unless the same is not disputed by the other side and has sterling quality. The documents placed by the petitioner before this Court, requires appreciation of evidence, which can only be done by the Court below during the course of trial.

7. Insofar as the contention of the learned counsel appearing for the petitioner that a complaint has already been given against the respondent, it is for the petitioner to work out his remedies in accordance with law. Irrespective of whether a complaint is given by the petitioner before the Police against the respondent, the fact remains that the entire case is borne out by records. The petitioner has to establish his defence with those available records in order to rebut the presumption under Section 139 of the Negotiable Instruments Act, 1881.

8. In view of the above, liberty is given to the petitioner to raise all the grounds that have been raised in this petition before the Court below and the Court below shall consider the same on its own merits and in accordance with law. Whatever materials the petitioner wants to place before the Court below can be done so in the course of trial.

9. In view of the above, these Criminal Original Petitions are dismissed with the above directions. The Court below is directed to complete the proceedings within a period of six months from the date of receipt of copy of this order.



10. At this stage, the learned counsel appearing for the petitioner would submit that the petitioner is suffering from some illness and therefore, her presence can be dispensed with. Accepting the said submission, the presence of the petitioner is dispensed with before the Court below. She shall be represented by an Advocate. The petitioner shall appear before the Court at the time of 313 questioning and at the time of pronouncing judgment. The petitioner shall give an undertaking affidavit before the Court to the effect that she will be represented by her counsel and the counsel will cross-examine the witnesses on the day they are examined in chief and the petitioner will not question the identity of any of the witnesses. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-I)

To

The Judicial Magistrate, No.1,
Kovilapatti, Thoothukudi District.

+1cc to Mr.V.Rajiv Rufus, Advocate Sr.No.88424

+6cc to M/s.Polax Legal Solutions, Sr.No.88528, 88974, 88975,
88976, 88977, 88978

TSG

VB/RSK/SAR1/16.10.2018/3P/9C

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