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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.07.2018

CORAM :

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

CRL.O.P. (MD) No.14516 of 2011

and

M.P. (MD) Nos.1 & 2 of 2011

1. M/s.Alchem International Limited,
Represented through its,
Vice President (Purchase)/A1,
J.S.Grewal,
Village Kailly, Ballabgarh,
Faridabad District, Haryana.
2. J.S.Grewal,
M/s.Alchem International Limited,
Village Kailly, Ballabgarh,
Faridabad District, Haryana.
3. Ramprathap Yadav,
M/s.Alchem International Limited,
Village Kailly, Ballabgarh,
Faridabad District, Haryana. ... Petitioners/Accused

Vs.

N.S.Palanisamy ... Respondent/Complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C., to call for the records and to quash the complaint in S.T.C.No.1157 of 2011 on the file of the learned Judicial Magistrate, Oddanchathram, Dindigul District.

For Petitioners	: Mr.Devinder Pal Singh
For Respondent	: Mrs.N.Muthulakshmi

ORDER

The petitioners stand as accused in S.T.C.No.1157 of 2011 on the file of the learned Judicial Magistrate, Oddanchatram, Dindigul District.

2. This Court went through the complaint averments. The case of the complainant is that he is an agriculturist and a leading business man. It is further stated in the complaint that the second accused approached the complainant at his residence and borrowed Rs. 90,000/- on 24.04.2011 for the Company. He had agreed to pay the same. There was an act of borrowal on their part. To discharge their liability, he issued on the same day the



complaint cheque for a sum of Rs.90,00,000/-. The complainant presented the cheque for collection and it was dishonoured. After following the usual statutory formalities, he filed the impugned complaint in question. The complaint was taken on file by the learned Judicial Magistrate, Oddanchatram and notice came to be issued. To quash the same, the present Criminal Original petition has been filed.

3. The learned counsel appearing for the complainant wanted time. But this Court is not inclined to adjourn the matter. This Criminal Original petition is of the year 2011. The complainant had been served long time back and entered appearance through his counsel. The present second counsel for the complainant had entered appearance in the year 2017. We are now in July 2018. Therefore, the question of adjourning the matter does not arise.

4. That apart, this Court is adjudicating the matter on an uncontroverted fact. According to the complainant, the accused reside in Haryana and the Company has its head quarters there. Therefore, in the very nature of things, Section 202 of Cr.P.C., ought to have been borne in mind before taking the case on file.

5. As rightly pointed out by the learned counsel for the petitioners/accused, the issue on hand is no longer *res integra*. The Hon'ble Supreme Court in the decision reported in **(2016) 11 S.C.C. 105 (K.S.Joseph V. Philips Carbon Black Ltd., and others)**, has held as follows:-

"10. Learned counsel for the respondent-complainant could not place any material to counter the two submissions noted above. We have already noted earlier that the Order Sheet does not disclose and application of mind either to the issue of delay or to the requirement of Section 202, Code of Criminal Procedure. Since the order of the Magistrate issuing summons is clearly without due application of mind to the issue of delay, we have not gone into the detailed consideration of the correctness of submission based upon Section 202 of the Code of Criminal Procedure and as to whether such requirement of enquiry or investigation is attracted even for offences under the Act. This question of law is therefore left open. But on the ground of non application of mind to the issue of delay and considering that the High Court has passed a ~~erroneous~~ order without even noticing the contentions advanced on behalf of the appellant, we set aside the impugned order



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of the High Court as well as the order of cognizance summoning the accused passed by the learned Magistrate. The Magistrate is directed to reconsider the relevant facts of the Complaint Case including the issue of delay and its condonation in accordance with law as well as the requirement of enquiry etc. Under Section 202 of the Code of Criminal Procedure and pass fresh orders in accordance with law. The appeals stand allowed to the aforesaid extent."

6. In view of Section 202 of Cr.P.C., where the accused do not reside within the jurisdiction of the learned trial Magistrate, the issue of process must be postponed and there must be an enquiry or investigation for the purpose of deciding whether or not there is sufficient ground for proceeding. In this case, this statutory mandate under Section 202 of Cr.P.C., was not followed. Therefore, the submission of the learned counsel for the petitioners that there is absolutely no application of mind on the part of the learned jurisdictional Magistrate deserves acceptance. On this sole ground, the impugned summon deserves to be quashed.

7. It is made clear that the learned trial Magistrate will issue notice to the complainant to see if the transaction in question was duly reflected in his Income Tax returns. Such a direction is issued in this case, as the learned counsel for the petitioners specifically alleges that the cheques issued by the Company and entrusted to certain named persons have misused the same and that the Company has also lodged a complaint leading to registration of Crime No.370 of 2011 on the file of the Sector 55 police station, Faridabad. He would also point out that the present complainant N.S.Palanisamy is a proclaimed offender in the said criminal case. Be that as it may, unless the complainant is able to show *prima facie* material that the cheque in question is backed by consideration, the Court below shall not take the matter on file. In any event, the mandate set out in Section 202 of Cr.P.C., shall be borne in mind. The proceedings in S.T.C.No.1157 of 2011 on the file of the learned Judicial Magistrate, Oddanchatram, stand quashed.

8. With these directions, the Criminal Original petition stands allowed. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/



To

The Judicial Magistrate,
Oddanchathram, Dindigul District.

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+1cc to Mr.Devinder Pal Singh, Advocate Sr.No.73746

PMU

VB/KAK/SAR3/14.08.2018/4P/3C

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