



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.02.2018

Delivered on : 20.02.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.O.P. (MD) Nos.5533 and 5534 of 2013

and

M.P. (MD) Nos.1 and 1 of 2013

Crl.O.P. (MD) No.5533 of 2013:-

S.Nalini ... Petitioner/Accused

Vs.

R.Sivarajan ... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the entire records pertaining to the case in S.T.C.No.127 of 2013 pending on the file of the Judicial Magistrate Court, Srivaikundam, Thoothukudi District and quash the same.

Crl.O.P. (MD) No.5534 of 2013:-

1.S.Sundara Raman

2.S.Nalini ... Petitioners/A1 & A2

Vs.

S.Ramesh Kumar ... Respondent/Complainant.

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the entire records pertaining to the case in S.T.C.No.87 of 2013 pending on the file of the Judicial Magistrate Court, Sathankulam, Thoothukudi District and quash the same. [Prayer amended as per order dated 08.02.2018, made in M.P. (MD) Nos.3 of 2013 in Crl.O.P. (MD) No.5534 of 2013]

For Petitioners : Mr.R.Anand
(in both the Crl.O.Ps.)

For Respondent : Mr.V.Kathirvelu
(in both the Crl.O.Ps.) Senior Counsel
for Mrs.S.Ragaventhre

The petitioner in Crl.O.P. (MD) No.5533 of 2013 herein is the sole accused in S.T.C.No.127 of 2013 on the file of the Judicial



Magistrate Court, Srivaikundam, Thoothukudi District. The petitioners in CrI.O.P.(MD)No.5534 of 2013 are arrayed as Accused Nos.1 and 2 in S.T.C.No.87 of 2013 on the file of the Judicial Magistrate Court, Sathankulam, Thoothukudi District.

WEB COPY

2.The abovesaid cases were filed by the respective respondents in terms of Section 138 of the Negotiable Instruments Act. Now, the petitioners have approached this Court to call for the entire records pertaining to the abovesaid cases and to quash the same as illegal.

3.The learned counsel appearing for the petitioners submitted that on 16.09.2012 at 11.00 a.m., one P.Srinivasan, who is the brother of one S.Nalini [second petitioner in CrI.O.P.(MD)No.5534 of 2013 and the petitioner in CrI.O.P.(MD)No.5533 of 2013] on his transit, misplaced the cheques pertaining to the cases, for which, he had given a complaint before the Sub-Inspector of Police, J5-Shastri Nagar Police Station, Besant Nagar, Chennai and thereafter, a certificate has also been issued by the concerned police to prove that the so-called cheques are being misused by the respondents. Further, he added that since the cheques were lost on 16.09.2012, it could not be possible to present the same by the respondents on 04.11.2012. So, the said aspect clearly proves that the respondents herein foisted a false case against the petitioners and therefore, the proceedings pending against the petitioners are liable to be quashed.

4.On analysing the grounds raised by the petitioners, detailed discussion is not necessary to settle the issue, which has arisen in these cases. Actually, the cheques, which are alleged to be lost, mentioned in the complaints before the police and getting a certificate to that effect are all factual aspects. Even though the submission made by the learned counsel appearing for the petitioners may be true one, it could be established only by way of putting evidence, particularly, on marking documents, which were relied on by the petitioners.

5.At this juncture, it is relevant to refer the judgment of the Hon'ble Supreme Court in Ajay Kumar Das Vs. State of Jharkhand and another reported in 2011 (12) SCC 319, wherein it has been held as follows:

'15. allegations will have to be dealt with by the court at different stages for which liberty would be available to the appellant. In our considered opinion, this is not the stage when the court would make an inquiry into the factual position to find out as to whether or not the appellant is guilty of the charges or not. The appellant, in our considered opinion, will have sufficient opportunity to place his entire case before the Court at the time of framing of the charge since charge-sheet had already been



filed against the appellant also holding that a case under Section 304-B and Section 34 is made out. We do not wish to enter into the factual details for any discussion on them at this stage as the same may prejudicially affect the case of the appellant.''

WEB COPY

6. Applying the principles laid down in the abovesaid judgment, the petitioners herein are having the duty to avail remedy only by way of trial proceedings. Without seeing the evidence and without giving opportunity to the respondents, no body can come to the conclusion that the cases were foisted based on the cheques, which were lost by the petitioners. Accordingly, the reasons stated by the petitioners for quashing S.T.C.Nos.127 of 2013 and 87 of 2013, pending on the file of the Judicial Magistrate Court, Srivaikundam, Thoothukudi District and the Judicial Magistrate Court, Sathankulam, Thoothukudi District respectively, are not justifiable. Hence, these Criminal Original Petitions are dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

The Judicial Magistrate, Sathankulam, Thoothukudi District.

+1CC to Mr.K.Prabhu, Advocate, SR.No. 49980

common order in
Crl.O.P. (MD) Nos.5533 and 5534 of 2013
20.02.2018

smn2

AM/SV MMS/SAR 3/27.02.2018/3P/3C