

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2019

CORAM

THE HONOURABLE Mr.JUSTICE N. ANAND VENKATESH

Crl.O.P.No.1204 of 2016
and
Crl.MP.Nos.532 & 533 of 2016

1.S.P.Velayutham
2.V.Amar

.... Petitioners/A1 & A2

Vs.

R.Tamilarasu
rep.by J.Subramanian (POA)
residing at No.9,Thennanthope street,
Rajaji Nagar, Zamin Pallavaram,
Chennai-600 041.

... Respondent/Complainant

Prayer: This Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records on the file of the Judicial Magistrate Court, Tambaram in C.C.No.5480 of 2015, and quash the same.

For Petitioner : Mr.T.Saikrishnan
for Mr.Sai Bharath

For Respondent : Mr.D.Ravichander

O R D E R

This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.5480 of 2015, pending on the file of the Judicial Magistrate Court, Tambaram, and quash the same.

2.The respondent has filed a private complaint against the petitioners for an offence under Section 138 of the Negotiable Instruments Act.

3.A reading of the complaint shows that the 1st petitioner is the drawer of the cheque and the 2nd petitioner has been made as an accused only on the ground that he stood as the guarantor for the amount due and payable by the 1st petitioner to the respondent.

4.The learned counsel for the petitioners submitted that even though various grounds have been raised with regard to the 1st petitioner, the same will be agitated before the Court below and the Court below may be permitted to consider the same on its own merits and in accordance with law. The learned counsel further submitted that the 1st petitioner is suffering very serious ailment and his presence may be dispensed with and he shall be permitted to be represented by an advocate.

5.The learned counsel for the petitioners further submitted that the 2nd petitioner ought not to have been made as an accused since admittedly he is not the drawer of the cheque.

6.The learned counsel for the respondent submitted that sufficient allegations have been made in the complaint and therefore both the petitioners must be made to face the trial before the Court below and this Court should not interfere with the proceedings in exercise of its jurisdiction under Section 482 of Cr.P.C.

7.This Court has carefully considered the submissions made on either side and the materials available on record.

8.Insofar as the 2nd petitioner is concerned, he ought not to have been made as an accused, since admittedly he was not the drawer of the cheque. He has been made as an accused only on the ground that he stood as a guarantor. This is not the ground on which, the 2nd petitioner can be made as an accused and the Court below while taking cognizance against the 2nd petitioner, completely failed to take note of this fundamental principle. Therefore, the proceedings will have to be interfered insofar as the 2nd petitioner is concerned.

9.The grounds raised by the 1st petitioner are factual in nature and the same can be considered before the Court below in the course of the proceedings on its own merits and in accordance with law.

10.Taking into consideration the physical ailment suffered by the 1st petitioner, the presence of the 1st petitioner shall be dispensed with and he shall be permitted to be represented by his counsel. The counsel representing the 1st petitioner shall cross examine the witnesses on the same day they are examined in chief. The Court below can dispense with the presence of the 1st petitioner even at the time of

questioning under Section 313 of Cr.P.C., and the answers can be sought for by way of permitting the 1st petitioner to file an affidavit before the Court below. The 1st petitioner shall be present before the Court below at the time of final judgment.

11. In the result, the proceedings in C.C.No.5480 of 2015, on the file of the Judicial Magistrate Court, Tambaram, is quashed insofar as the 2nd petitioner is concerned. This petition is dismissed insofar as the 1st petitioner is concerned. Accordingly, this Criminal Original Petition is partly allowed and the Court below is directed to complete the proceedings within a period of three months from the date of receipt of copy of this Order. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

KP

To

1. Judicial Magistrate Court,
Tambaram.

2. Do Thro The Chief Judicial Magistrate,
Tambaram.

PM(CO)
CB(19/09/2019)

CrI.O.P.No.1204 of 2016

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