

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.659 of 2019
and
Crl.M.P.No.411 of 2019

1.D.Ganapathy Iyer

2.G.Muthusamy

3.G.Sankaran ... Petitioners /Accused 1 to 3

[As per order dated 23.01.2019
in Crl.O.P.No.659 of 2019 and
Crl.M.P.Nos.411 and 413 of
2019 and the petitions are
dismissed in so far as the
third petitioner is concerned]

Vs.

P.S.Rajan ... Respondent /Complainant

Prayer : Criminal Original Petition filed under Section 482 of
the Code of Criminal Procedure, to call for the records
pertaining to the proceedings pending in C.C.No.1 of 2018 on the
file of the learned Judicial Magistrate, Fast Track Court,
Alandur, Chennai and quash the same.

For Petitioners: Mr.M.Sasikumar

For Respondent : Mr.M.Guruprasad

O R D E R

The prayer sought for in the Criminal Original Petition is
to call for the records pertaining to the proceedings pending in
C.C.No.1 of 2018 on the file of the learned Judicial Magistrate,
Fast Track Court, Alandur, Chennai and quash the same.

2.No representation for the petitioners. Heard the learned
counsel appearing for the respondent.

3.The case of the petitioner is that the respondent herein has not approached the Court with clean hands. The first and second petitioners had not agreed to pay Rs.57,00,000/- to the respondent before the Mediation Centre of Hon'ble High Court, Madras as stated in the complaint. The order copy of Cr1.O.P.No.13543 of 2015 dated 19.12.2015 clearly shows that "Earlier the matter was referred to Mediation Centre and the parties also appeared before the said centre; however, no amicable settlement was arrived at between the petitioner and the defacto complainant, hence, the matter was referred back to the Court."

4.The respondent misleading the Court had stated in the complaint in the Mediation held at Mediation Centre of Hon'ble High Court, Madras, the first and second petitioners have agreed to repay Rs.57,00,000/- to the respondent. For the existing liability of the amount received from the respondent, the first petitioner paid a sum of Rs.5,00,000/- to the respondent in the month of September 2016, through RTGS and for the remaining amount of Rs.20,00,000/- the first petitioner issued the cheque bearing No.790730 dated 17.09.2016 drawn on ICICI Bank, West Mambalam, Chennai and the respondent presented the cheque through his bank and the same was returned unpaid with an endorsement "SIGNATURE DIFFERS" and the respondent instead of get fresh cheque from the first petitioner, the respondent filed a private complaint against the first petitioner before the Judicial Magistrate (Fast Track Court), Alandur, Chennai for the alleged offence under Section 138 of Negotiable Instruments Act in C.C.No.242 of 2017. Suppressing all these facts for the same transaction and the existing liability, the respondent filed the present complaint against the petitioners is not maintainable in law.

5.The respondent did not state anything in this complaint in C.C.No.1 of 2018 about there is a case pending against the 1st petitioner in C.C.No.242 of 2017 for the alleged offence under Section 138 of Negotiable Instrument Act for the same set of transaction. There is no legally enforceable debt between the respondent and the third petitioner and the third petitioner had not issued any cheques to the respondent. The respondent took the third petitioner cheque forcibly from the petitioners house. For the forgoing reasons stated above, the continuance of the proceedings in C.C.No.1 of 2018 is only an abuse of process of Court and as such liable to be quashed.

6.The learned counsel appearing for the respondent submitted that the third petitioner is the signatory of the cheque. In respect of the first and the second petitioner concerned, who are father and brother of the third petitioner only borrowed the amount to settle the amount. The third petitioner issued the

cheque. It is seen that already this Court dismissed the petition as against the third petitioner. Admittedly, the A1 & A2 are not the signatory of the cheque and the complaint cannot be maintained as against the first and second petitioner. It is also seen that the private complaint filed as against the first and second petitioner only on the ground that they have approached the respondent seeking loan. The complaint cannot be maintainable as against the first and second accused.

7. Therefore, this Court is inclined to quash the proceedings as against the first and second petitioner alone and ordered accordingly. With regard to the third petitioner the quash petition already dismissed by this Court and considering the Calender Case is of the year 2018, the Judicial Magistrate, Fast Track Court, Alandur, Chennai is directed to complete the trial proceedings in C.C.No.1 of 2018, within a period of four months from the date of receipt of a copy of this order.

8. With this observation, this Criminal Original Petition stands disposed of. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate,
Fast Track Court,
Alandur,
Chennai.

2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.Guruprasad, Advocate Sr.21168

Cr1.O.P.No.659 of 2019

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srg 26/04/2019