

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.Nos. 42 and 282 of 2018
Crl.M.P.Nos. 21, 22 & 7791 of 2018 and
Crl.MP.Nos. 103, 104, 7781 of 2018

S.Boopalan

Proprietor of ASB Tools,
No.PB7/1, Sipcot Industrial Estate,
Irungattukottai,
Kancheepuram District,
Pin 602 117

... Petitioner in
both Crl.O.Ps.

Vs.

Mr.R.Perumal (Managing Partner)
Sun Polymers,
No.C3, Mogappair Industrial Estate,
Mogappair East,
Chennai - 600 037.

... Respondent in
both Crl.O.Ps.

Prayer in both petitions: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records and quash all proceedings in C.C.Nos. 237 and 238 of 2017 respectively, pending on the file of the Fast Track Court cum Judicial Magistrate, Ambatur, Chennai.

For Petitioner
in both petitions : Dr.G.Krishnamurthy

For Respondent
in both petitions : Mr.M.Devaraj

COMMON ORDER

These petitions have been filed to quash the proceedings in C.C.Nos. 237 and 238 of 2017 respectively, pending on the file of the Fast Track Court cum Judicial Magistrate, Ambatur, Chennai.

2. The learned counsel appearing for the petitioner submitted that the respondent filed complaint for the offence punishable under Section 138 of Negotiable Instruments Act as against the petitioner. He submitted that the learned Magistrate ought not to have taken cognizance for the offence under Section 138 of Negotiable Instruments Act, since already there was a settlement between the petitioner and the defacto complainant in the proceedings in S.T.C.No.112 of 2016 on the file of the learned IX Metropolitan Magistrate, Saidapet, Chennai. In the said proceedings, the respondent filed a petition under Section 257 of Cr.P.C., in view of the compromise entered between them, thereby the proceedings in S.T.C.No.112 of 2016 was withdrawn by the defacto complainant. Thereafter again, he filed the present complaint for the allegation that the petitioner purchased plastic materials to the worth of Rs.17,98,347/- on various dates from the respondent firm viz, Sun Polymers. For the purchase of the said plastic goods, the petitioner issued cheques bearing No.001248 dated 25.03.2017 for the sum of Rs.2,50,000/-. When it was presented for collection, it was returned dishonoured for the reason that funds insufficient. He further submitted that after the settlement, the respondent presented the cheque, which was given as collateral security purpose at the time of supplying materials has been now presented and false case has been foisted as against the petitioner. Therefore, he prayed for quashment of the entire proceedings.

3. Per contra, the learned counsel appearing for the respondent/ defacto complainant submitted that the petitioner purchased plastic granules worth about Rs.17,98,347/- on various dates from the respondent partner firm viz., Sun polymers. For the repayment of the part amount, the petitioners issued cheque bearing No.004605 dated 15.08.2014 for the sum of Rs.1,94,649/-. It was presented for collection and dishonoured for the reason that exceed arrangement. Therefore, the respondent initiated proceedings under Section 138 of Negotiable Instruments Act. While pending trial, there was a settlement between the petitioner and the respondent with the following terms.

"3. It is further humbly submits that the petitioner/defacto complainant and the respondent/accused amicably settled the money dispute with regard to transaction of their business dealing of supply of plastic goods and in pursuance to that the respondent/accused has issued the following cheques bearing Nos. (1) 001247 dated 05.11.2016 drawn at KVB, Porur Branch, Chennai for a sum of Rs.2,00,000/- (Two lakhs only) (2) 001248 dated 25.03.2017

drawn at KVB, Porur Branch, Chennai for a sum of Rs.2,50,000/- (Two Lakh fifty thousand only) (3) 001249 dated 25.04.2017 drawn at KVB, Porur Branch, Chennai for a sum of Rs.4,21,000/- (Four lakh twenty one thousand only) in favour of complainant therein. The respondent/accused also sold his residential house bearing plot No.3B in the layout named as "Sri Vaishanave Avenue Extension-I" Admeasuring 1100 Sq.ft., out of 3305 Sq.ft., comprised in Survey No.451/2A Part (As per Patta Survey No.451/2A3) of Kovoor Village, Sriperumbudur Taluk, Kancheepuram District to and in favour of the petitioner/complainant and a sum of Rs.10,00,000/- (Ten lakh only) was adjusted with outstanding amount stood in the name of the respondent/accused. For the remaining amount cheques issued as mentioned above.

4. Insofar as this case is concerned the respondent/accused herein today paid a sum of Rs.2,00,000/- (Two lakhs only) to the petitioner/complainant herein by way of demand draft drawn at Andhra Bank, Kundrathur Branch in favour of Sun Polymers in D.D.bearing No.429275 dated 04.03.2017 and the same was accepted by the petitioner/complainant herein for withdrawing the present complaint pending in S.T.C.No.112 of 2016 and further assured that the complainant will not make any claim against the respondent/accused herein. The petitioner/complainant also returned the cheque bearing No.001247 dated 05.11.2016 drawn at KVB, Porur Branch Chennai for a sum of Rs.2,00,000/- (Two lakh only) to the respondent/accused herein, since it was paid by way of demand draft as mentioned above."

3.1. Accordingly, towards final settlement the petitioner issued two cheques bearing No.001248 dated 25.03.2017 for a sum of Rs.2,50,000/- and another cheque bearing No.001249 dated 25.04.2017 for a sum of Rs.4,21,000/- both cheques drawn on KVB, Porur Branch, Chennai. On believing the promise made by the petitioner, the respondent filed a petition under Section 257 of Cr.P.C. and withdrawn the proceedings in S.T.C.No.112 of 2016,

on the file of the Fast Track Court, Judicial Magistrate, Ambattur. To the shock and surprise, while presenting the said cheques, again both were returned dishonoured and as such the respondent/defacto complainant initiated the present proceedings for the offence punishable under Section 138 of Negotiable Instruments Act, in C.C.Nos.237 and 238 of 2017 on the file of the Judicial Magistrate, Ambatur, Chennai. Therefore, there is absolutely no settlement between the parties and only to cheat the respondent, the petitioner issued both cheques. On believing the false promise, the respondent had withdrawn the earlier complaint in S.T.C.No.112 of 2016. Therefore, the present quash petition is devoid of merits and on false representation, he managed to stay of all further proceedings and prayed for dismissal of the quash petition.

4. Heard Dr.G.Krishnamurthy, learned counsel appearing for the petitioner and Mr.M.Devaraj, learned counsel appearing for the respondent.

5. The respondent is the complainant in both the cases and the petitioner is the accused in both the cases. Admittedly, towards the purchase of plastic granules the petitioner issued part payment for a sum of Rs.1,94,649/- bearing cheque No.004605 dated 15.08.2014. It was dishonoured, as such the respondent initiated proceedings for the offence under Section 138 of Negotiable Instruments Act in S.T.C.No.112 of 2016 on the file of the Judicial Magistrate, Ambattur. While pending the proceedings, the petitioner and the respondent entered into compromise and towards compromise, the petitioner again issued two cheques for the sum of Rs.2,50,000/- and Rs.4,21,000/- by way of two cheques bearing Nos.001248 and 001249, respectively. When both the cheques were presented for collection, again both the cheques were returned dishonoured. Therefore, the earlier settlement not complied by the petitioner and the respondent again proceeded under Section 138 of Negotiable Instruments Act, in two complaints viz., C.C.Nos. 237 and 238 of 2017 on the file of the learned Judicial Magistrate, Ambattur. Further the petitioner mislead this Court as if, after the settlement, the cheques which were given as security purpose were presented. But it is not so and he completely mislead this Court and misrepresented before this Court, as such both the petitions are liable to be dismissed. Considering the facts and circumstances of the case, the trial Court viz., Fast Track Court cum Judicial Magistrate, Ambattur, Chennai is directed to complete the entire trial proceedings in C.C.Nos. 237 and 238 of 2017 within a period of three months from the date of receipt of a copy of this Order.

6. Accordingly, these Criminal Original Petitions stands dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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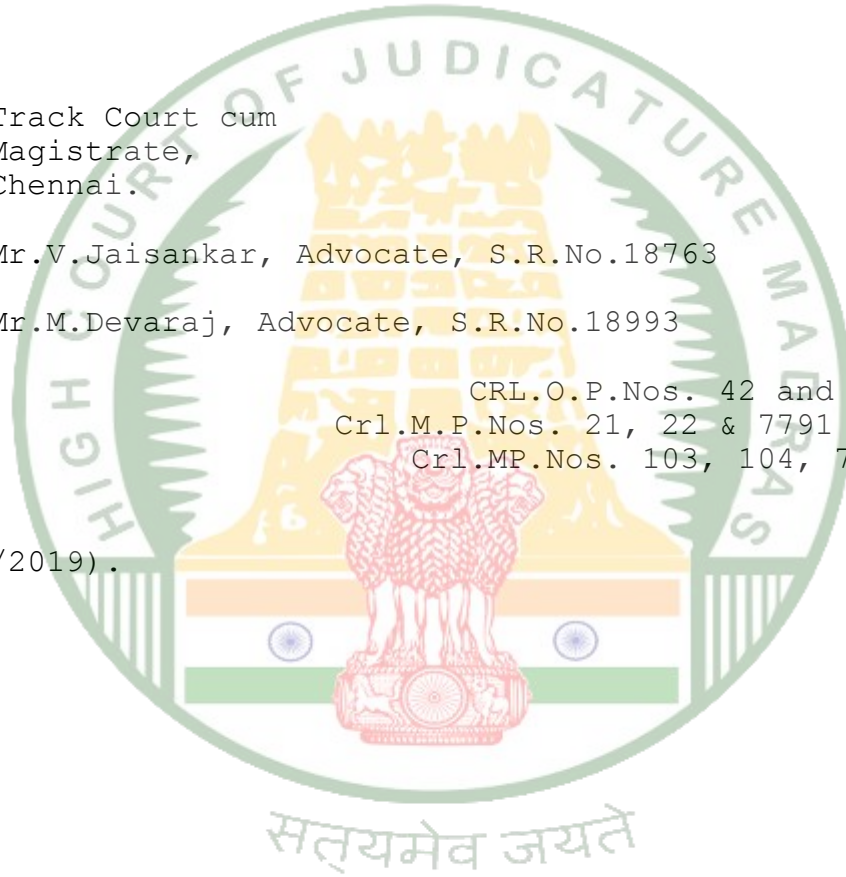
The Fast Track Court cum
Judicial Magistrate,
Ambatur, Chennai.

+1 cc to Mr.V.Jaisankar, Advocate, S.R.No.18763

+1 cc to Mr.M.Devaraj, Advocate, S.R.No.18993

CRL.O.P.Nos. 42 and 282 of 2018
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KS (CO)
SSM(05/04/2019).



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