

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 13.03.2019
CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.Nos.6713 & 6724 of 2019
and
Crl.M.P.Nos.3714, 3715, 3718 & 3719 of 2019

1.M/s.Sri Rengas Avitta Garments
Represented by its Partner
R.Rajaram

2.R.Rajaram
Partner, M/s.Sri Renga Avitta Garments

... Petitioners in both Crl.O.Ps.

Vs.

R.Indira
Proprietrix
M/s.Sri Ganapathy Tex,
Rep. by her Power Agent and Manager
M.Prakash
Having office at No.59
Military Road, Ammapet
Salem 636 003

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

COMMON PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C. to call for the records in S.T.C.No.643 of 2019 and S.T.C.No.651 of 2019 on the file of the learned Judicial Magistrate No.5, Salem, quash the proceedings therein.

For Petitioners : Mr.C.S.Dhanasekaran

COMMON ORDER

These Criminal Original Petitions have been filed under Section 482 of Cr.P.C. to call for the records in S.T.C.No.643 of 2019 and S.T.C.No.651 of 2019 on the file of the learned Judicial Magistrate No.5, Salem, quash the proceedings therein.

2.The learned counsel for the petitioner would submit that the learned Judicial Magistrate without following the procedure contemplated under Section 202 Cr.P.C. has taken cognizance on the private complaint filed by the respondent for the offence under Section 138 r/w 141 of Negotiable Instruments Act in S.T.C.No.643 of 2019 and S.T.C.No.651 of 2019. The learned counsel would further submit that in fact, in the earlier occasion also the learned Judicial Magistrate did not satisfy the mandatory requirements under Section 202 (1) Cr.P.C. Therefore, the petitioner approached this Court by

filing the petitions in CrI.O.P.Nos.22492 & 22493 of 2018 and this Court by its order dated 14.12.2018 set aside the order of cognizance taken in S.T.C.Nos.908 & 909 of 2018 and remitted the matter back to the Trial Court for following the procedure under Section 202 Cr.P.C. Even thereafter the learned Judicial Magistrate while recording the sworn statement of the complainant represented by his Power Agent without even perusing the document of Power of Attorney, simply recorded the sworn statement and taken cognizance and issued summons to the petitioners. Therefore, he prays for quashing of the entire proceedings.

3. Heard the learned counsel for the petitioners.

4. The petitioners are the accused 1 & 2. The respondent filed a private complaint for the offence under Section 138 r/w. 141 of Negotiable Instruments Act as against the petitioners. It is also seen that in the earlier occasion this court in CrI.O.P.Nos.22492 & 22493 of 2018 on 14.12.2018 directed the learned Judicial Magistrate to follow the procedure contemplated under Section 202 Cr.P.C. and to take cognizance in accordance with law within a period of four months from the date of receipt of a copy of the order. The relevant portion of the order is as follows:

"7. In the considered view of this Court, the learned Judicial Magistrate did not satisfy the mandatory requirements under Section 202(1) of Cr.P.C. Therefore, this Court has to necessarily quash the cognizance taken by the Court below and remand the matter back to the learned Judicial Magistrate, in order to properly follow the procedure contemplated as under Section 202 of Cr.P.C.

8. In the result, the cognizance taken by the Court below in S.T.C.Nos.908 & 909 of 2018 on the file of the learned Judicial Magistrate No.5, Salem are hereby quashed and the matter is remitted to the Court below to properly follow the procedure under Section 202 of Cr.P.C. and thereafter, proceed with the cases in accordance with law.

9. It is made clear that the learned Judicial Magistrate shall complete the entire proceedings within a period of four months from the date of receipt of a copy of this order."

5. It is seen that the private complaint has been filed by the respondent through her Power of Attorney namely M.Prakash. After receipt of the order, the learned Magistrate recorded the sworn statement of the Power of Attorney namely M.Prakash and followed the procedure contemplated under Section 202 of Cr.P.C. and thereafter has taken cognizance for the offence

under Section 138 r/w 141 of Negotiable Instruments Act and issued summons. As directed by this Court, the learned Judicial Magistrate conducted enquiry under Section 202 of Cr.P.C. and has taken cognizance. The only point raised by the petitioner is that the learned Judicial Magistrate did not follow the procedure contemplated under Section 202 Cr.P.C. i.e. the Power of Attorney document was not at all discussed by the learned Judicial Magistrate when the cognizance was taken.

6.It is also seen from the sworn statement that the Power of Attorney categorically submitted that he deposed on behalf of the Principal. Further, the Power of Attorney can be marked only during the trial. Therefore, the learned Judicial Magistrate has rightly followed the procedure contemplated under Section 202 Cr.P.C. and taken the cognizance and issued summons to the petitioners. Therefore, this Court does not find any merit in this petition.

7.Accordingly, these Criminal Original Petitions stand dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.5
Salem

2.The Public Prosecutor,
High Court of Madras.

+1cc to Mr.C.S.Dhanasekaran , Advocate SR.No. 23568

CrI.O.P.Nos.6713 & 6724 of 2019

and

CrI.M.P.Nos.3714, 3715, 3718 & 3719 of 2019

A.SK(04/04/2019)