

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.Nos.7482, 7487, 7492 & 7493 of 2019 and
Crl.M.P.Nos.4126, 4128, 4130, 4131,
4133, 4134, 4136 & 4137 of 2019

Abdur Rahman ... Petitioner in all Crl.O.P.'s

Vs.

Asad Adam Sait
Represented by his power agent
Adam Mohamed Sait,
Flat No.2A, Topaz Terrace,
F-10, 1st Street,
Anna Nagar East,
Chennai-600 102

...Respondent in Crl.O.P.No.7482 of 2019

Fahad Adam Sait
Represented by his power agent
Adam Mohamed Sait,
Flat No.2A, Topaz Terrace,
F-10, 1st Street,
Anna Nagar East,
Chennai-600 102

...Respondent in Crl.O.P.No.7487 of 2019

Sarah Adam Sait
Represented by her power agent
Adam Mohamed Sait,
Flat No.2A, Topaz Terrace,
F-10, 1st Street,
Anna Nagar East,
Chennai-600 102

...Respondent in Crl.O.P.No.7492 of 2019

Navsheen Adam Sait
Represented by her power agent
Adam Mohamed Sait,
Flat No.2A, Topaz Terrace,
F-10, 1st Street,
Anna Nagar East,
Chennai-600 102

...Respondent in Crl.O.P.No.7493 of 2019

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COMMON PRAYER: Criminal Original Petitions filed under Section 482 Cr.P.C. praying to call for the records in C.C.Nos.1743, 1744, 1745 & 1746 of 2012 on the file of the learned Fast Track Court-II, Egmore, Chennai and quash the same insofar as this petitioner is concerned.

For Petitioner : Mr.S.Arumugam
in all CrI.O.P.'s

COMMON ORDER

These petitions have been filed to quash the proceedings in CC.Nos.1743 to 1746 of 2012 on the file of the learned Fast Track Court-II, Egmore, Chennai.

2. The learned counsel for the petitioner submitted that the petitioner is the sole accused in the proceedings in CC.Nos.1743 to 1746 of 2012 initiated by the respondents for the offence punishable under Section 138 of Negotiable Instruments Act. He further submitted that the complaint was filed through the power of agent and the original power of attorney is not produced at the time of recording sworn statement before the trial court. Further he submitted that the original power of attorney was not filed along with the complaint and photocopy of the power of attorney only filed before the trial court. Therefore, the learned Magistrate ought not to have taken cognizance without the original power of attorney and he further submitted that in fact while examining PW1, the photo copy of the power of attorney only marked as Exhibit P1 and original power of attorney was not produced by the complainant. He further submitted that there is no legally enforceable debt between the parties. Therefore, the offence under Section 138 of Negotiable Instruments Act is not attracted as against the petitioner.

3. He further submitted that the statutory notice issued by the respondents did not even show the bank of the complainant and as such it is a defective notice. In this regard, he further submitted that the power of attorney holder did not have any knowledge about the transaction between the complainant and the respondents and as such though they holds power of attorney they have no locus to file the complaints.

4. Heard, the learned counsel for the petitioner. No one appeared on behalf of the respondents.

5. The petitioner is the sole accused and the respondents are the complainants who initiated proceedings under Section 138 of Negotiable Instruments Act. The crux of the allegation is

that the petitioner is doing construction business in the name and style of Real Foundation, Promoters and builders. In due course of business the petitioner had received various investments from the respondents and their family members and promised to return the same. Since the petitioner did not finish the project within the specified period and had given possession of flat and various other dues, the father of the defacto complainant lodged complaint on 23.03.2006 and no action was taken. Therefore, he filed a private complaint in CrI.M.P.No.2955 of 2008 on the file of the learned Additional Chief Metropolitan Magistrate Court, Egmore and it was ordered under Section 156(3) Cr.P.C.

6. Thereafter, the petitioner and the respondents have come for settlement and executed memorandum of understanding on 15.10.2008. As per the Clause (3) of the memorandum of understanding a sum of Rs.50 lakhs was to be paid by the petitioner within a period of five months. Thereafter, the petitioner paid a sum of Rs.15 lakhs and issued a post dated cheque for a sum of Rs.35 lakhs. The cheque was presented for collection and it was returned dishonoured for the reason that 'insufficient funds'. After issuance of statutory notice, the proceedings has been initiated by the respondents for the offence punishable under Section 138 of Negotiable Instrument Act.

7. In fact, the petitioner already approached this Court in CrI.O.P.Nos.15567 to 15572 of 2013 to quash the proceedings in CC.Nos.1743 to 1746 of 2012 initiated by the respondents herein. The said quash petitions were dismissed by common order dated 16.08.2013. In the said quash petition, the petitioner had taken so many grounds and the same were rejected by this Court. Again, the petitioner filed this quash petition on the ground that the respondents filed complaints through their power of attorney and while taking sworn statement they did not produce original copy of the power of attorney. He further submitted that even the original power of attorney was not enclosed along with the complaints. Further he submitted that in the statutory notice, the respondents did not mention the bank of the defacto complainant and as such it is a defective one.

8. It is seen that the learned Magistrate after recording sworn statement have taken cognizance of the complaints for the offence punishable under Section 138 of Negotiable Instruments Act and issued summons to the petitioner. In the first round of litigation, the petitioner raised so many grounds and all the grounds were rejected by this Court. Thereafter, the trial has also been commenced by the trial court and PW1 was examined. At this stage, again the petitioner approached this Court on other grounds. Though the petitioner is permitted to move this Court

by way of another quash petition by raising another ground, those are not substantiated to entertain the present quash petitions. Admittedly sworn statement was recorded from the power of attorney and taken cognizance. At the time of taking cognizance, the original power of attorney was verified and returned back to the defacto complainant and it will be marked while examining the defacto complainant.

9. Further non mentioning of the banker's name in the legal notice cannot be construed as defective notice. Therefore, the grounds raised by the petitioner cannot be considered by this Court. It is nothing but clear abuse of process of law and it is filed only to drag the proceedings. Further the proceedings in C.C.Nos.1743, 1744, 1745 & 1746 of 2012 are pending for the past seven years. The petitioner initiated first round of quash petitions in the year 2013 and this Court dismissed the quash petitions on 16.08.2013 itself. After period of six years, now again the petitioner has filed these quash proceedings on different ground that too for the reason that these grounds were left out at the time of first quash petition. Therefore, the quash petitions have no merits to be entertained.

10. In view of the above discussions, these Criminal Original Petitions are dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Fast Track Court-II,
Egmore, Chennai

+lcc to Mr.S.Arumugam, Advocate sr.30408

Crl.O.P.Nos. 7482, 7487, 7492 & 7493 of 2019 and
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nr 28/05/2019