

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 27.03.2019

CORAM
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.Nos.4502 and 4503 of 2014
and
M.P.Nos.1,1,2 and 2 of 2014

1.M/s.New Designs Signs (P) Ltd.,
Rep.by its Director,
Mr.Newton Biju.

2.Newton Biju ... Petitioners
(in Crl.OP.No.4502 of 2014)

Sylvia Robert Petitioner
(in Crl.OP.No.4503 of 2014)

S.Kannan Vs. ... Respondent
(in both Crl.OPs)

Common Prayer: Criminal Original Petitions filed under Section 482 Cr.P.C. to call for the records relating to C.C.Nos.915 & 916 of 2014 pending on the file of XVIII Metropolitan Magistrate, Saidapet, Chennai and quash the same.

For Petitioners: No appearance
(in both Crl.OPs)

For Respondent : No appearance
(in both Crl.OPs)

सत्यमेव जयते
O R D E R

These petitions have been filed to quash C.C.Nos.915 & 916 of 2014, pending on the file of XVIII Metropolitan Magistrate, Saidapet, Chennai.

2.When the matter is taken up for hearing there is no representation for the petitioner. Despite service of notice, there was no representation for the respondent also.

3.On perusal of records, it is seen that the petitioners used to obtain short term loan from the respondent for an exorbitant interest and repay the same within a short period of time. Likewise, during March 2012, the petitioners took Rs.10,00,000/- as loan from the respondent at a rate of 5%

interest per month in default in addition to another 5%. The petitioners repaid Rs.7,00,000/- and the balance of Rs.3,00,000/- has not been repaid for which the respondent threatened the petitioners with dire consequences. Hence, the petitioner made a complaint against the respondent but no case was registered. Again, the respondent came along with five others and threatened and ransacked their office premises and taken away unfilled cheque of the petitioners. According to the petitioners, the respondent forcibly took the cheque filled an amount of Rs.13,00,000/- and presented for collection, however, the same was dishonoured and thereafter filed a private complaint in C.C.No.915 of 2014 before the XVIII Metropolitan Magistrate, Saidapet, Chennai and the same is pending. Hence, the petitioners have filed the present petition with the aforesaid prayer.

4.It is relevant to extract the following observations made by the Hon'ble Supreme Court in the case of *Sau. Kamal Shivaji Pokarnekhar vs. the State of Maharashtra & ors.*, in Crl.A.No.255 of 2019 dated 12.02.2019, with regard to quashing of the criminal proceedings.

"4. The only point that arises for our consideration in this case is whether the High Court was right in setting aside the order by which process was issued. It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not.

5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to

interfere.

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9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."

5. On perusal of the complaint, it is seen that there are specific allegations as against the petitioners to attract the offences under Sections 138 of Negotiable Instruments Act. Hence, this Court does not find any merits to quash the proceedings in C.C.No.915 and 916 of 2013. Accordingly, these Criminal Original Petitions are dismissed. Connected miscellaneous petitions are also closed.

6. However, considering the calendar case is of the year 2014, the learned XVIII Metropolitan Magistrate, Saidapet, Chennai, is directed to complete the trial within a period of twelve weeks from the date of receipt of copy of this order, if not already disposed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The XVIII Metropolitan Magistrate,
Saidapet, Chennai.

Cr1.O.P.Nos.4502 & 4503 of 2014
and

M.P.Nos.1,1,2 and 2 of 2014

SSI (CO)

RRS (08/07/2019)