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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 01.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
Crl.O.P. (MD) .Nos.5715 of 2014 & 13907 of 2015
and
M.P. (MD) Nos.2 & 3 of 2014 & 1 and 2 of 2015

Crl.O.P. (MD) .No.5715 of 2014:

Senthil Krishnan

...Petitioner/Accused No.6

Vs.

1.The State rep. by
The Inspector of Police,
District Crime Branch,
Karur.
(Crime No.21 of 2011)

...1st Respondent/Complainant

2.Anand

...2nd Respondent/
defacto complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Cr.P.C., to call for the records relating to the charge sheet in C.C.No.141 of 2013 on the file of the Judicial Magistrate Court No.I, Karur and to quash the same as illegal.

For Petitioner

:Mr.R.Gandhi

For R-1

:Mr.M.Chandrasekaran

Additional Public Prosecutor

For R-2

: Mr.P.Murugesan

Crl.O.P. (MD) .No.13907 of 2015:

1.Saravanan

2.Subramani

3.Senthil

...Petitioners/Accused Nos.1 to 3

Vs.

State rep. by

1.The Inspector of police,
District Crime Branch,
Karur District.

(Crime No.21 of 2011)

...1st respondent/Complainant

2.P.R.Anand

...2nd Respondent/
Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Cr.P.C., to call for the records relating to the charge sheet in C.C.No.141 of 2013 on the file of the Judicial Magistrate Court No.I, Karur and to quash the same as illegal.



For Petitioners : Mr.G.Karuppasamy Pandiyan
For R-1 : Mr.M.Chandrasekaran
Additional Public Prosecutor
For R-2 : Mr.P.Murugesan

C O M M O N O R D E R

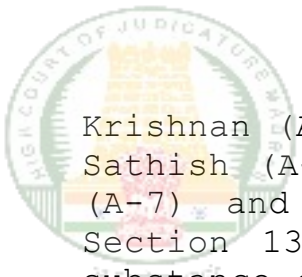
For the sake of convenience, the parties would be referred to, by their names.

2.Anand (defacto complainant) lodged a complaint, based on which, the District Crime Branch, Karur, registered a case in Crime No.21 of 2011 on 27.07.2011 under Sections 120-B, 406 and 380 IPC and after completing the investigation, filed final report in C.C.No.141 of 2013 before the learned Judicial Magistrate No.I, Karur, for the said offence against eight accused, for quashing which, Saravanan (A-1), Subramani (A-2), Senthil (A-3) and Senthil Krishnan (A-6) are before this Court, via, two petitions viz., Crl.O.P.(MD)No.13907 of 2015 and 5715 of 2014 respectively.

3.Heard the learned counsel appearing for the petitioners/accused; learned Additional Public Prosecutor appearing for the first respondent and the learned counsel appearing for the defacto complainant.

4.To appreciate the rival submissions, it may be necessary to advert to the allegations in the First Information Report and the charge sheet:-

It is the case of the defacto complainant (Anand) that Subramani (A-2) is his paternal uncle and Saravanan (A-1) and Senthil (A-3) are the sons of A-2; the family of Subramani (A-2) were demanding a share in the self acquired properties of Anand's (defacto complainant) father; since the family of Anand (defacto complainant) were not willing to give any share, the family of Subramani (A-2) filed a partition suit in O.S.No.09 of 2009 before the District Court, Karur, and the same is pending; while that being so, Anand (defacto complainant) received statutory notices under Section 138 of the Negotiable Instruments Act, from the Advocates of Sathish (A-4), Sudhakar (A-5), Senthil Krishnan (A-6), Periyasamy (A-7) and Nandagopal (A-8) alleging that the cheques issued to them in discharge of certain debts were dishonoured; on receipt of the notices, Anand (defacto complainant) made enquiries and learnt that between 2006 and 2008, when the relationship between the two families were cordial, Saravanan (A-1) had come inside the office of Anand (defacto complainant) and had stolen away 58 signed cheques of State Bank of Trivancore and Lakshmi Vilas bank and had given those cheques in the year 2011 to Sathish (A-4), Sudhakar (A-5), Senthil

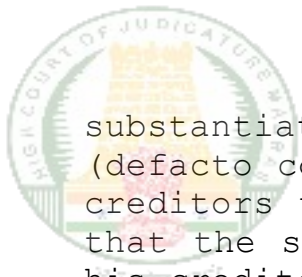


Krishnan (A-6), Periyasamy (A-7) and Nandagopal (A-8), with which, Sathish (A-4), Sudhakar (A-5), Senthil Krishnan (A-6), Periyasamy (A-7) and Nandagopal (A-8), have initiated prosecutions under Section 138 of Negotiable Instruments Act. This is the sum and substance of the allegations in the charge sheet also.

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5. However, there is no shred of material to show that excepting Senthil Krishnan (A-6), the other accused viz., Sathish (A-4), Sudhakar (A-5), Periyasamy (A-7) and Nandagopal (A-8), have filed prosecutions against Anand (defacto complainant) under Section 138 of the Negotiable Instruments Act. As regards Senthil Krishnan (A-6), he has issued a legal notice, dated 11.07.2011 to Anand (defacto complainant), wherein he has stated that on 30.05.2010, Anand (defacto complainant) obtained a loan of Rs.7,15,000/-, towards which, he (Anand) had issued a post dated cheque, dated 20.12.2010 drawn on Lakshmi Vilas Bank for Rs.7,15,000/- and when the said cheque was presented, it was dishonoured on the ground 'Account Closed'. After issuing the statutory notice, dated 11.07.2011, Senthil Krishnan (A-6), filed a private complaint under Section 138 of the Negotiable Instruments Act against Anand (defacto complainant) and on account of the Judgment of the Supreme Court in *DASHRATH RUPSINGH RATHOD v. STATE OF MAHARASHTRA* (2014 (9) SCC 129), followed by amendments to Section 138 of the Negotiable Instruments Act, the case papers were returned by the Court to him.

6. The learned counsel appearing for Anand (defacto complainant) brought to the notice of this Court that a reply notice has been given to Senthil Krishnan (A-6) alleging that the cheque was stolen and was given to Senthil Krishnan (A-6). Be that as it may, even according to Anand (defacto complainant), the accounts and transactions relating to M/s.T.T.Exports was stopped in the year 2002 itself and the bank accounts were also closed. If that is so, it is indeed strange as to how Anand (defacto complainant) would have kept 58 signed cheques of M/s.T.T.Exports in the year 2006 to 2008 for Saravanan (A-1) to steal and distribute them to A-4 to A-8 in the year 2011?. In other words, according to Anand (defacto complainant), Saravanan (A-1) had stolen those cheques some time between 2006 and 2008 and those cheques were given to A-4 to A-8 in the year 2011, based on which, Sathish (A-4), Sudhakar (A-5), Senthil Krishnan (A-6), Periyasamy (A-7) and Nandagopal (A-8), presented the cheques and issued statutory notices under Section 138 of the Negotiable Instruments Act. According to Anand (defacto complainant), Saravanan's (A-1) family was very close to his family prior to 2009. Had that been so, Saravanan (A-1) himself would have known that there is no point in stealing the cheques of a Company which had closed its accounts in the year 2002 itself. Except the *Ipsi dixit* of Anand (defacto complainant) that Saravanan (A-1) had stolen the cheques in the year 2006 to 2008 and had given them to A-4 to A-8 in the year 2011, there is absolutely no shred of material to



substantiate this allegation. It is also possible that Anand (defacto complainant) himself would have issued the cheques to his creditors to hoodwink them and thereafter would have taken a stand that the said cheques were stolen by Saravanan (A-1) and given to his creditors.

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7. In such view of the matter, this Court is of the opinion that the present prosecution in C.C.No.141 of 2013, is an abuse of process of law and accordingly, these Criminal Original Petitions are allowed. The entire prosecution in C.C.No.141 of 2013 on the file of the learned Judicial Magistrate No.I, Karur, stands quashed not only as against the petitioners herein, but also as against other accused, who are not before this Court, since the Judicial time of the Magistrate should not be wasted on such frivolous litigations. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AE)

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Sub Assistant Registrar (CS)

To

1. The Inspector of Police,
District Crime Branch,
Karur.

2. The Judicial Magistrate Court No.I, Karur.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.A.K.AZHAGAR SAMI, Advocate, SR.No. 58396

CrI.O.P. (MD) .Nos.5715 of 2014
& 13907 of 2015
01.04.2019

RJ2

KK/SAR/06.05.2019/ 4P- 5C