



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.04.2019

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WEB COPY

**Cr1.O.P. (MD)No.7665 of 2016
and Cr1.M.P. (MD) .Nos.3930 & 3931 of 2016**

1.M/s.Mak Enterprises,
Rep. by its Proprietor, Mr.S.Padmanaban,
S/o K.Selvaraj,
situated at 41/3, Singaram Pillai Street,
Mugappair Road,
Padi, Chennai - 50.

2.M.S.Padmanaban

3.Mrs.P.Thamilarasi

.. Petitioners

Vs.

Mrs.G.Gunasekari

.. Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.110 of 2016 on the file of the Judicial Magistrate Court No.II, Trichy and quash the same.

For Petitioner : Mr.K.Neethimohan

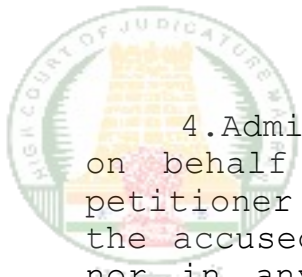
For Respondent : Mr.M.Kannan

ORDER

The petitioners are accused in a private complaint instituted by the respondent herein under Section 138 of Negotiable Instruments Act, before the learned Judicial Magistrate No.II, Trichy in C.C.No.110 of 2016.

2.The learned counsel for the petitioners would submit that a civil suit is pending between the parties in C.S.No.767 of 2010 on the file of the High Court, Madras and without referring the same, the complaint has been filed. Therefore, the complaint is not maintainable.

3.Per contra, the learned counsel for the complainant would submit that the proceedings in C.S.No.767 of 2010 is also referred in the complaint and pending suit only the cheque in dispute has been given by the second accused, which on presentation got returned and therefore, the complaint has been filed.



4. Admittedly, the cheque has been issued by the second accused on behalf of the first accused company. However, the third petitioner / wife of the second accused is also arrayed as one of the accused. The third accused is neither signatory to the cheque nor in any way connected with the affairs of the first accused company. There is no specific averment against the third accused in the complaint and there is no specific material available to show the participation of the third petitioner in day to day administration of the company. In the absence of any material connecting the third accused with the first accused company, the complaint as against the third accused cannot be maintained.

5. Accordingly, the criminal original petition is allowed in respect of the third accused and the complaint as against the third accused in C.C.No.110 of 2016 on the file of the Judicial Magistrate No.II, Trichy, is quashed. But, this Court is not inclined to quash the complaint as against the other petitioners and accordingly, other petitioners are concerned, this criminal original petition is dismissed and the trial Court is directed to proceed the case in C.C.No.110 of 2016 further as against the other petitioners are concerned. Considering the age of the case, the trial Court is directed to expedite the trial and conclude the same within a period of five months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

6. The learned counsel for the petitioner has also sought indulgence of this Court to dispense with the personal appearance of the second petitioner. Insofar as considering the dispense with the personal appearance is concerned, the second petitioner shall file necessary application before the concerned Court either under Section 205 or under section 317 of Cr.P.C and the Magistrate shall consider the same on merits and in accordance with law.

Sd/-

Assistant Registrar

/ True Copy /

Sub Assistant Registrar (CS-)

TM

To

The Judicial Magistrate No.II,
Trichy

+1 CC to M/s.K.KEVIN KARAN, Advocate (SR-64120[F] dated 30/04/2019)

Cr1.O.P. (MD) No.7665 of 2016
29.04.2019