



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.10.2019

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD).No.3878 of 2018
and
Crl.M.P.(MD)No.1892 of 2018

1. P.Ramachandran
2. R.Padmavathy

... Petitioners/Accused Nos.1 and 2

Vs.

C.Mohan

... Respondent / Complainant

PRAYER: Petition filed under Section 482 of the Criminal Procedure Code, to call for the records pertaining to S.T.C.No.42 of 2018, on the file of the Judicial Magistrate No.I, (Fast Track Court at Magisterial Level), Madurai, Madurai District and quash the same.

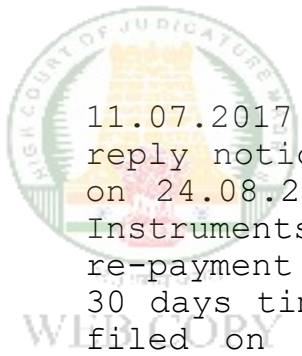
For Petitioners : Mr.P.T.Thiraviam

For Respondent : No appearance

O R D E R

This petition has been filed challenging the proceedings initiated under Section 138 of the Negotiable Instruments Act, in S.T.C.No.42 of 2018, on the file of the Judicial Magistrate No.I, (Fast Track Court at Magisterial Level), Madurai, Madurai District.

2. The learned Counsel for the petitioners would submit that there are four accused in which the petitioners are arrayed as A1 and A2. The respondent lodged a complaint alleging that the petitioners/A.1 and A.2 are the landlords of Central Plaza Hotel, Koodalalagar Perumal Kovil Street, Madurai and A3 and A4 were tenants under A1 and A2 and they have paid a sum of Rs.3,00,000/- (Rupees Three Lakhs only) by cash towards advance and the petitioners borrowed the balance amount of Rs.2,00,000/- (Rupees Two Lakhs only) from the defacto complainant as debt in the presence of A3 and A4. Therefore, A.3 and A.4 issued a post-dated cheque, dated 10.04.2017 for a sum of Rs.2,00,000/- (Rupees Two Lakhs only) in favour of the defacto complainant and assured that they will repay the same within a period of two months and when the said cheque was presented for collection, the same was dishonoured for the reason that "payment stopped by drawer". After issuance of notice, he proceeded with the complaint under Section 138 of the Negotiable Instruments Act as against the petitioner. He further submitted that the respondent issued a statutory notice on

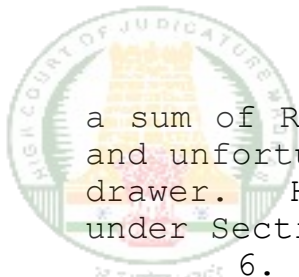


11.07.2017 and after receipt of the same, the petitioners issued a reply notice on 15.07.2017 and whereas the complaint was filed only on 24.08.2017 as contemplated under Section 138 of the Negotiable Instruments Act. After issuance of notice, fifteen days time for re-payment of the cheque amount, and thereafter, the complainant has 30 days time to file a complaint. However, the complaint should be filed on or before 26.08.2017, whereas the complaint was filed belatedly and as such, the learned Magistrate ought not to have taken cognizance on the belated complaint. He further submitted that the first petitioner is the owner of the building and a lease agreement has been entered with one Hemalatha on the term of rental basis and the advance was fixed as Rs.5,00,000/- (Rupees Five Lakhs only) and the rent was fixed as Rs.5,000/- (Rupees Five Thousand only) and after agreement, she was not running any business in the above address. Subsequently, she vacated the premises and the rental agreement was also cancelled. She is none other than the wife of the third accused in the complaint. Therefore, there is absolutely no relationship between the petitioner and the third accused. The petitioners never borrowed any amount from the defacto complainant and did not issue any cheque to the defacto complainant and there are some transactions between the respondent and the accused Nos.3 and 4, in that transaction, the petitioners are no way connected and as such the impugned proceedings is nothing but a clear abuse of process of law.

3. Though the notice was served on the respondent, neither the learned counsel for the respondent nor the respondent appeared today.

4. Heard the learned counsel for the petitioners and perused the materials available on record.

5. The respondent initiated the proceedings under Section 138 of the Negotiable Instruments Act, as against the petitioners in S.T.C.No.42 of 2018 on the file of the learned Judicial Magistrate No.I, (Fast Track Court at Magistrate Level), Madurai, Madurai District. The petitioners are arrayed as A1 and A2. Even according to the defacto complaint, the first and second accused/petitioners herein are the relatives of the defacto complainant. They borrowed a sum of Rs.2,00,000/- (Rupees Two Lakhs only) which was paid by the defacto complainant in front of the the third accused. They also assured that the said amount shall be repaid within a period of two months. At that time, the first accused introduced the third accused that they are running a medical agency, in which the third accused is also one of the share holder. Therefore, to develop their business, they need a further sum of Rs.5,00,000/- (Rupees Five Lakhs only), of which, the first instalment of Rs.3,00,000/- (Rupees Three Lakhs only) shall be paid to the first and second accused and the remaining amount of Rs.2,00,000/- (Rupees Two Lakhs only) be paid by the first accused, in which, the third accused issued a cheque for



a sum of Rs.2,00,000/- (Rupees Two Lakhs only) and it was presented and unfortunately, it was returned as the payment was stopped by the drawer. Hence, the defacto complainant initiated the proceedings under Section 138 of the Negotiable Instruments Act.

6. Admittedly, the cheque issued by the third accused, according to the defacto complainant on behalf of the first and second accused, the third accused has issued a cheque and hence, all the accused are liable to be punished under Section 138 of the Negotiable Instruments Act. Though the first and second accused borrowed a sum of Rs.2,00,000/- (Rupees Two Lakhs only) from the defacto complainant, they did not issue any cheque. It is also submitted that there are transactions from the third and fourth accused, in which, the third accused issued the alleged cheque and the petitioners/A1 & A2 are neither signatory to the cheque nor guarantor to the said amount. Therefore, they cannot be punished under Section 138 of the Negotiable Instruments Act. The alleged cheque was also issued in the personal capacity and not on behalf of any Company or Institution. Therefore, the entire proceedings initiated as against the petitioners is nothing but abuse of process of law. Therefore, this Court is of the view that the proceedings in S.T.C.No.42 of 2018 on the file of the learned Judicial Magistrate No.I, (Fast Track Court at Magistrate Level), Madurai, Madurai District, is liable to be quashed.

7. Accordingly, this Criminal Original Petition is allowed and the proceedings in S.T.C.No.42 of 2018 on the file of the learned Judicial Magistrate No.I, (Fast Track Court at Magistrate Level), Madurai, Madurai District, is hereby quashed as against the petitioners alone. The trial Court is directed to proceed with the trial as against the other accused persons and the same shall be completed within a period of six months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (P AND A)

// True Copy //

Sub Assistant Registrar(CS)

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To

The Judicial Magistrate No.I,

(Fast Track Court at Magisterial Level),

Madurai, Madurai District

+3 CC to M/s.P.T.THIRAVIAM, Advocate (SR-91561[F] dated

04/10/2019)

Crl.O.P. (MD) .No.3878 of 2018

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__KK/SAR/25.10.2019/3P-5C/

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