



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.10.2019

CORAM :

THE HONOURABLE MR. JUSTICE **G.K. ILANTHIRAIYAN**

WEB COPY

Crl.O.P.(MD)Nos.5552, 5589, 5590 and 5591 of 2018
and

Crl.MP(MD)Nos.2676, 2677, 2695, 2696, 2697, 2698, 2699 & 2700 of
2018

NJL Traders, Tirunelveli
Represented by its Partner
Muthukumarasamy,
S/o.Gomathinayagam,
Srinivasa Perumal Kovil Street,
Kilakulam, Veeravanallur,
Tirunelveli District.

... Petitioner/Sole Accused
in Crl OP(MD)No.5552/2018

...1st Petitioner in Crl OP(MD)
No.5591/2018

Muthukumarasamy
S/o.Gomathinayagam
Partner NJL Traders
Srinivasa Perumal Kovil Street,
Kilakulam, Vadakku Veeravanallur Village,
Cheranmahadevi Taluk
Tirunelveli District-627 426.

...Petitioner /Sole Accused in
Crl OP(MD)Nos.5589&5590/2015

NJL Traders, Tirunelveli,
Represented by its Partner,
Pechiayya,
S/o.Navamani,
Door NO.9/92, South Street,
Gowthamapuri,
Ambasamudram,
Tirunelveli District.

....2nd Petitioner/Accused No.2
in Crl.OP.(MD)No.5591 of 2018

Vs.

1.Karuppasamy

... Respondent/Complainant

<https://hcservices.ecourts.gov.in/hcservices/>

in Crl.OP(MD)No.5552 of 2018



WEB COPY

2.Prema ... Respondent/Complainant
in Crl.OP (MD) No.5589 of 2018

3.Chithral ... Respondent/Complainant
in Crl.OP (MD) No.5590 of 2018

4.Rathinakumari Respondent/Complainant
in Crl.OP (MD) No.5591 of 2018

Common Prayer: Criminal Original Petitions filed under section 482 of Criminal Procedure Code, to call for the records of the complaint in S.T.C.No.635 of 2017, S.T.C.No.637 of 2017, S.T.C.No.636 of 2017 and S.T.C.No.632 of 2017 on the file of the learned Judicial Magistrate, Cheranmahadevi and quash the same.

For Petitioner : Mr.V.Sasikumar
(In all Crl.OPs)

For Respondent : Mr.S.R.Ramachandran
(In Crl.OP (MD) Nos.5552 & 5589 of 2018)

For Respondent : No appearance.
(In Crl.OP (MD) No.5590 of 2018)

For Respondent : J.Perekhkumar
(In Crl.OP (MD) No.5591 of 2018)

COMMON ORDER

These Criminal Original Petitions have been filed to quash the proceedings in S.T.C.No.635 of 2017, S.T.C.No.637 of 2017, S.T.C.No.636 of 2017 and S.T.C.No.632 of 2017 on the file of the learned Judicial Magistrate, Cheranmahadevi.

2. Heard, the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

3. A careful perusal of entire materials available on record, the charge sheet discloses a *prima facie* offence against the petitioners and there is no reason to interfere with the same. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Crl.A.No.255 of 2019*** dated ***12.02.2019*** in the case of ***Sau. Kamal Shivaji Pokarnekar vs. the State of Maharashtra & ors.***, as follows:-

"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



WEB COPY

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.

.....

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."

4. It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **Crl.A.No.579 of 2019** dated **02.04.2019** in the case of **Devendra Prasad Singh Vs. State of Bihar & Anr.**, as follows:-

" 12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

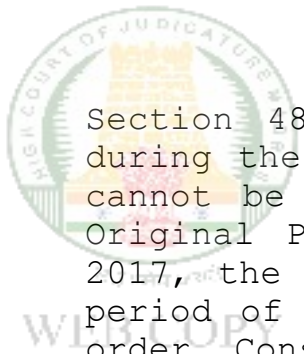
13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

5. In view of the above discussion, this Court is not inclined to quash the charge sheets in S.T.C.No.635 of 2017, S.T.C.No.637 of 2017, S.T.C.No.636 of 2017 and S.T.C.No.632 of 2017.

6. However, in all these petitions, the petitioners are one and the same. The respondent initiated proceedings under Section 138 of the Negotiable Instruments Act.

7. The petitioner in all the petitions averred that the alleged complaint nowhere mentioned about the date of payment and what purpose it was borrowed by the petitioner. Further, the alleged cheque was obtained by the respondents under the guise of harassment and all the cheques were not at all issued for any legal enforceable debt.

8. It is seen from the complaint there are specific allegations as against the petitioner to attract the offence under Section 138 of the Negotiable Instruments Act. Further, the grounds pleaded by the petitioner cannot be considered herein under



Section 482 of Cr.P.C. All the points can be considered only during the trial before the Trial Court and the question of facts cannot be considered by this Court. Therefore, all the Criminal Original Petitions are dismissed. Considering case of the year 2017, the Trial Court is directed to complete the trial within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD II)

// True Copy //

Sub Assistant Registrar (CS)

Dss

To

The Judicial Magistrate,
Cheranmahadevi.

Crl.O.P.(MD)Nos.5552, 5589, 5590 and 5591 of 2018
and

Crl.MP(MD)Nos.2676, 2677, 2695, 2696, 2697, 2698, 2699 & 2700 of
2018

18.10.2019

KM/(08.11.2019) 5P 2C