



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.09.2019

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD) .Nos.21883 to 21888 of 2018
and
Crl.M.P. (MD) Nos.2989 to 2994 of 2019 and
10169 to 10180 of 2018

Crl.O.P. (MD) .No.21883 of 2018

A. Mallikinisha ... Petitioner in all WPs

- Vs.

1.Nizamuddin @ Mohammed Mazrook,
S/o Mohammed Rafi,
Rep.By His Power Agent,
Ziauddin,

2.M. Siddique @ Abu Bakkar ... Respondents in all WPs

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the records in S.T.C.No.440, 439, 435, 436, 437 and 438 of 2016 on the file of learned Judicial Magistrate No.II, Kumbakonam under section 138 of Negotiable Instruments Act and quash the same as far the petitioner /accused 1 is concerned

In all WPs:

For Petitioner : Mr.M.Shajahan

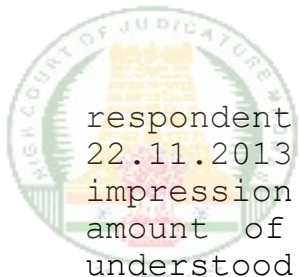
For R-1 : Mr.T.Balasubramanian

For R2 : Mr.S.M.Shajahan

COMMON ORDER

These Criminal Original Petitions have been filed to quash the proceedings in S.T.C.Nos.440, 435 to 439 of 2016 on the file of learned Judicial Magistrate No.II, Kumbakonam under Section 138 of the Negotiable Instruments Act.

2.The learned counsel for the petitioner would submit that totally there are two accused in which the petitioner is arrayed as first accused. The allegation made in the complaint is that the



respondent / defacto complainant entered into a sale agreement on 22.11.2013 for the sale consideration of Rs.2,05,10,840/- under the impression that the said property was clean and had paid an advance amount of Rs.2,05,10,840/-. Thereafter, the defacto complainant understood that there are so many litigations, as such, the accused could not able to register the sale deed in favour of the defacto complainant. Therefore, the defacto complainant demanded to return back his money. In this regard, he lodged a complaint and the same was registered in Crime No.418 of 2014 for the offences under Sections 406,420, 468, 471 and 506(i) of I.P.C. The petitioner herein/A1 and A2 have approached this Court, in Crl.O.P.(MD)No.16057 of 2014 seeking for grant of anticipatory bail. While granting anticipatory bail interim protection has been given to refund the entire amount to the defacto complainant. Accordingly, the accused persons have given Demand Drafts for a sum of Rs.25,00,000/- (Rupees Twenty Five Thousand only) and the cheques dated 05.06.2015 bearing Nos.519705 to 519713 for a sum of Rs.90,00,000/- (each cheque Rs.10 lakhs) and the cheques dated 30.06.2019 bearing cheque Nos.519714 to 519722 for a sum of Rs.90,00,000/- (each cheque Rs.10 lakhs) before the Court itself towards the settlement of entire dues. Considering the issuance of those cheques, this Court made absolute the interim order granted in the anticipatory bail petition. Further, the allegation is that the first accused has also filed an affidavit dated 09.12.2014 and undertook before this Court to settle the amount by issuing post dated cheques, for a sum of Rs.1,80,00,000/- to the defacto complainant. Accordingly, the defacto complainant presented the cheques for collection and the same was returned cheques dishonoured. Therefore, the defacto complainant also filed a petition to cancel the anticipatory bail in Crl.O.P.(MD)Nos.337 of 2015 and 17742 of 2015. This Court, by order, dated 20.07.2016 cancelled anticipatory bail. Therefore, the defacto complainant initiated proceedings under Section 138 of the Negotiable Instruments Act, against the accused.

3.The learned counsel for the petitioner would submit that the petitioner is arrayed as the first accused in this case. Admittedly, she is a signatory to the cheque. The second accused only issued cheque and as such the first accused cannot be prosecuted for the offence under Section 138 of Negotiable Instruments Act. Therefore, he sought for quashment of the entire proceedings.

4.Per contra, the learned counsel for the respondent / defacto complainant would submit that the first accused filed an affidavit before this Court for granting anticipatory bail and assured that the cheques given by the second accused would be honoured for a sum of Rs.1,80,00,000/-. He would further submit that the ground raised by the petitioner cannot be considered, since Section 141 of the Negotiable Instruments Act says that the cheques issued by the



further submit that this Court while cancelling the anticipatory bail granted to the petitioner/A2 and A1, has categorically observed as follows:

"9.Mr.Y.Kaja Navas, learned counsel for the 4th intervenor would submit the he has already filed a suit in O.S.No.151 of 2011 in I.a.No.759 of 2011 and there was an interim injunction against 19 and odd cents, allegedly belonging to him. This is not the subject matter of this complaint. That is the suit for bare injunction and not for declaration. Therefore, I am rejecting the contention of this intervenor also.

12.I find much force in the submission of the learned counsel for the intervenor Nizamoddin @ M.Mohammed Marzook. Mr.N.R.Elango, learned Senior Counsel for the petitioners would state that he will advise the petitioners to return the amount. "

5.Therefore, the defacto complainant prayed for dismissal of the quash petition.

6.Heard both sides.

7.There are totally two accused, in which, the petitioner is arrayed as the first accused. According to the defacto complainant, he entered into a sale agreement to purchase property with both the accused and paid a sum of Rs.1,80,00,000/-. Thereafter, he came to understand that there are so many encumbrances for the property. Therefore, the accused persons could not register the sale deed and therefore, the defacto complainant want return of money, in which, the defacto complainant has also lodged a complaint in Crime No.418 of 2014 of the offence under Sections 406,420, 468, 471 and 506(i) of I.P.C. In that crime the accused persons have approached this Court for anticipatory bail in Crl.O.P.(MD)No.16057 of 2014. While considering their anticipatory bail, this Court granted interim protection to the accused person on condition that the petitioners shall return the entire amount. Therefore, the accused had given demand draft for a sum of Rs.25,00,000/- and for the remaining amount, they have issued post dated cheques. In fact, they also filed a affidavit before this Court assuring that the cheques should be honoured, but, all the cheques were returned 'dishonoured'. Therefore, the defacto complainant also filed a petitions for cancellation of anticipatory bail before this Court. Crl.O.P.(MD)No.337 of 2015 and another Crl.O.P.(MD)No.17742 of 2015 and this Court, cancelled the anticipatory bail, by order, dated 20.07.2015.

8.That apart, the only ground raised by the petitioner herein/A2 is that the petitioner is only a signatory to the cheque. Therefore, under Section 138 of Negotiable Instruments Act is not



the Negotiable Instruments Act :-

" 141. Offences by companies.- If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

[Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.-For the purposes of this section,-

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

9. In the explanation categorically, state that 'company' means any body corporate and includes a firm or other association of individuals. In the case on hand, the petitioner is the owner of the land and she only entered into a sale agreement with the defacto complainant and received a sum of Rs.1,80,00,000/- as an advance. The complaint has been lodged by the defacto complainant as against both the persons viz., the petitioner herein /A1 and her husband/A2 in which they approached this Court for anticipatory bail, wherein, she presented a joint affidavit before this Court and also issued cheque



signed by her husband and now she is taking a shelter stating that she is only a signatory, the petitioner is the main person and she has also cheated by not honouring the cheques.

10.Considering the above circumstances, this court already cancelled their anticipatory bail by order dated 20.07.2016 and as stated above, the petitioner do not seek any further indulgence from this Court. More over, she is also liable to be punished and liable to be prosecuted for the offence under Section 138 of the Negotiable Instruments Act. Therefore, this Court finds no merit in these petitions. Therefore, these Criminal Original Petitions are dismissed. Further, since the cases are of the year 2016, the trial Court is directed to complete the trial, within a period of three months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To

The Judicial Magistrate No.II,
Kumbakonam.

Copy to:

The Section Officer, (2 Copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+6 CC to M/s.T.BALAKUMARAN, Advocate (SR-86157 to 86162 [F] dated 10/09/2019)

Crl.O.P. (MD) .Nos.21883 to 21888 of 2018
06.09.2019

Ls

JMN(20.09.2019) 5P : 10C