



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.12.2019

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE **A.D. JAGADISH CHANDIRA**

Crl.O.P. (MD) .Nos.13893 & 13946 of 2018

and

Crl.MP. (MD) Nos.6234 & 6259 of 2018

K.V.Sajin ...Petitioner/Accused
(in both OPs)
Vs.
1.V.Gopalakrishnan Respondent/Complainant
(in Crl.O.P. (MD) .Nos.13893 of 2018)
2.V.Chenthil Kumar Respondent/Complainant
(in Crl.O.P. (MD) .Nos.13946 of 2018)

COMMON PRAYER: These Criminal Original Petitions have been filed under Section 482 of Criminal Procedure Code, to call for the records relating to the impugned complaint in STC.Nos.133 & 118 of 2017 on the file of the Judicial Magistrate No.I, Kuzhithurai, and quash the same.

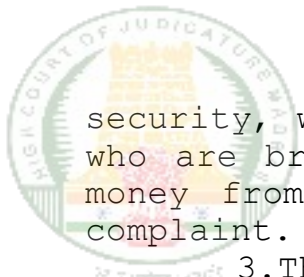
For Petitioner : Mr.R.Sivaram
(in both OPs)

For Respondents : M/s.A.Thiruvadi Kumar
(in both OPs)

C O M M O N O R D E R

These petitions have been filed to quash the impugned complaint in STC.Nos.133 & 118 of 2017 on the file of the Judicial Magistrate No.I, Kuzhithurai. In both the petitions, the petitioner is one and the same.

2.The learned counsel for the petitioner would submit that the petitioner's father viz., Kumaresan is doing Crusher business and he borrowed a sum of Rs.5,00,000/- from the respondent/defacto complainant for developing his business on 10.06.2015 and in respect of the loan transaction, the petitioner/accused had issued two cheques as security purpose. Further, the petitioner's father had paid a sum of Rs.5,000/- daily to the respondent/defacto complainant towards repayment and the said loan was repaid and closed on 17.09.2015 itself. Even though, the entire loan amount was repaid by the petitioner's father, the two cheques, which were given towards



security, were not returned to the petitioner and the complainants, who are brothers with a *mala fide* intention to extract exorbitant money from the petitioner had misused the cheques and filed the complaint.

3.The learned counsel further submitted that on the complaint given by the petitioner, a case in Crime No.434 of 2017 was registered by the Puthukadai Police, Kanyakumari for the offences under Sections 341, 294(b), 506(i) IPC and Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003. After completion of investigation, the Puthukadai police filed a final report and the same was taken cognizance in C.C.No.21 of 2018 on the file of the learned Judicial Magistrate No.II, Kuzhithurai. He further submitted that the continuance of the criminal proceeding as against the petitioner is nothing, but, clear an abuse of process of law.

4.Per contra, the learned counsel for the respondents would submit that the allegations against the petitioner in C.C.No.21 of 2018 is in respect of two cheques bearing in Cheque Nos.081482 and 081484, which are the subject cheques in the present S.T.C.Nos.133 and 118 of 2017. He would further submit that the complaint in Crime No.434/2017 is given only to raise a defence in the cheque cases. The respondents are contesting the case in C.C.No.21/2018.

5.The learned counsel would further submit that the defence that has been taken by the petitioner in the 138 proceedings in STC.No.133/2017 and STC.No.188/2017 pending on the file of the learned Judicial Magistrate No.I, Kuzhithurai, is the main allegation that has been made against the petitioner in the complaint given by the petitioner to the police and which is now pending in C.C.No.21 of 2018 on the file of the learned Judicial Magistrate No.II, Kuzhithurai and the cases of this nature are commonly called in criminal law as cross cases and such cases should be tried and disposed of by the same Court and that such cases should be tried in quick succession in order to avoid conflicting judgment being delivered upon similar facts and thereby he would seek that instead of quashing the proceedings, a direction may be issued, so that both the cases may be tried in quick succession by one of the same Court.

6.This Court has gone through the materials available on records.

7.In the present case, the defence taken by the petitioner and the evidence that is going to be relied on by the petitioner to substantiate the cases is the complaint, which has been made in C.C.No.2018.

8.Admittedly, S.T.C.No.133 of 2017 and S.T.C.No.188 of 2017 pending on the file of the learned Judicial Magistrate, No.I, Kuzhithurai and C.C.No.21 of 2018 pending on the file of the learned Judicial Magistrate No.II, Kuzhithurai are cross cases in respect of



the very same subject. Thereby either one of the cases can be transferred to the other Court to be tried in quick succession in order to avoid conflicting the judgment being delivered upon similar facts.

9.The grounds raised are matter for evidence and thereby the proceedings in S.T.C.No.133 of 2017 and S.T.C.No.118 of 2017 cannot be quashed. This Court is of the opinion that in such situation, the procedure to be followed should be as per the dictum laid down in the case of **Nathi Lal and other Vs. State of U.P and another** reported in **1990 (Supp) SCC 145**. The relevant paragraph No.2 of the said order reads as follows:

"We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned judge must try both the cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But, both the judgments must be pronounced by the same learned Judge one after the other."

10.In view of the same, the learned Judicial Magistrate No.II, Kuzhithurai is directed to transfer the entire records pertaining to the case in C.C.No.21 of 2018 to the file of the learned Judicial Magistrate No.I, Kuzhithurai to be tried along with S.T.C.Nos.133 and 118 of 2017.

11.At this juncture, the learned counsel appearing for the petitioner prayed that the personal appearance of the petitioner before the trial Court, may be dispensed with.

12.Accepting the said submission, the presence of the petitioner before the trial Court shall be dispensed with on condition that he shall be present on the first day of appearance, on the date fixed for receiving the copies, initial questioning,



reply to charges and questioning under Section 313 of Cr.P.C., and at the time of passing judgment and whenever insisted upon by the trial court.

13.The petitioner is further directed to give an undertaking in the form of affidavit that he will be duly represented by a counsel on all hearing dates and that the Counsel representing him will cross examine the prosecution witnesses on the same day they are examined in chief. The petitioner shall not dispute the identity of the witnesses. The petitioner shall appear before the Court in the event his presence is insisted by the trial judge for the purpose of identification. If the petitioner adopts any dilatorial tactics, it is open to the Trial Court to insist for his appearance and deal with the petitioner in accordance with the judgment of Supreme Court of India, **in State of Uttar Pradesh Vs. Shambunath Singh**, reported in **2001 (4) SCC 667**.

14. With the above directions, both the petitions are closed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar(CS)

dss

To

1.The Judicial Magistrate No.I,
Kuzhithurai.

2. Judicial Magistrate No.II,
Kuzhithurai.

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

+2 CC to M/s.A.THIRUVADI KUMAR, Advocate (SR-104785[F],104784 dated 13/12/2019)

+1 CC to M/s.M/S.R.S.SIVARAM, Advocate (SR-105077[F] dated 16/12/2019)

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12.12.2019

KK/SAR/29.01.2020/4P-7C/