

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.6245 of 2020
and M.P.No.3483 of 2020

1. O.M.Javeed
2. O.M.Muthahira

... Petitioners

Vs.

M/s.H.R.A.Leather Exports
Rep.by its Prop.Mr.K.H.Ameenur Rahman
Door No.411, H.M.O.Street,
Periyapet, Vaniyambadi Town,
Vellore District.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the entire records in S.T.C.No.510 of 2018 on the file of the Judicial Magistrate Vaniyambadi and quash the same against the petitioners.

For Petitioners: Mr.M.J.Nissar Ahmed
For Respondent : No appearance

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in S.T.C.No.510 of 2018 on the file of the Judicial Magistrate, Vaniyambadi, thereby taken cognizance for the offences under Sections 138 to 142 of Negotiable Instruments Act as against the petitioners.

2. On the complaint lodged by the respondent for the offences under Sections 138 to 142 of the Negotiable Instruments Act, the trial Court has taken the cognizance for the allegations that the respondent supplied sheep crust worth about Rs.16,93,745/- in which Rs.6,43,745/- was already paid and for the balance amount of Rs.10,50,000/- the accused have issued cheque for the said sum. The cheque was presented for collection and the same was returned for the reason "payment stopped by the drawer". On issuance of the statutory notice, the respondent proceeded with the complaint.

3. It is seen that there are totally ten (10) accused in which the petitioners are arrived as A6 & A8 in the complaint lodged by the respondent. In fact, the certificate issued by the Commercial Tax Department, Government of Tamil Nadu shows that there are only two partners for M/s. Saleh Tanning Company. It is averred that the petitioners are not partners of the first accused firm and the second and fifth accused are alone partners of the first accused partnership firm. According to the respondent, the first accused is the partnership firm consisting of nine partners. A2 to A10 are the active partners of first accused firm and they are doing leather tanning business. In order to settle the amount, the first accused firm issued the said cheque and the same was dishonoured for the reason "payment stopped by the drawer".

4. On perusal of the complaint the respondent categorically stated that the first accused is a partnership firm and the 2nd and 5th accused have approached the second respondent and purchased the materials and agreed to pay the entire amount. Further averred that the accused 2 to 10 were the active partners and personally doing business and above all considering the joint venture and they purchased the materials on credit. In fact all the accused have received the statutory notice issued by the second respondent and also some of the accused replied the notice.

5. Further stated that accused 2nd, 3rd, 5th, 6th, 8th and 10th are indulged in vandalism and as such the defacto complainant constrained to approach the police. Therefore there are specific averments and overt acts as against the petitioners. Though the petitioners took a stand that they are not the partners of the first accused firm and produced the partnership deed consisting the second and fifth accused alone as partners by deed of partnership dated 22.05.2013, in the reply notice dated 23.10.2018 there is no mentioning about that the petitioners are not the partners of the first accused firm, though it was stated that the second and fifth accused are alone partners of the first accused partnership firm. There is no specific denial of the partners or their role in the partnership firm.

6. That apart, the grounds raised by the petitioners are mixed question of fact and it has to be considered only before the trial Court during the trial. Therefore this Court is not inclined to quash the entire the proceedings and the petitioners are at liberty to raise all grounds before the trial Court. However, the personal appearance of the petitioners are dispensed with and they shall be represented by a counsel after filing appropriate application. The petitioners shall be present before the Court at the time of furnishing of copies,

framing charges, questioning under Section 313 Cr.P.C., and at the time of passing judgment.

7. Accordingly, the Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

dpq

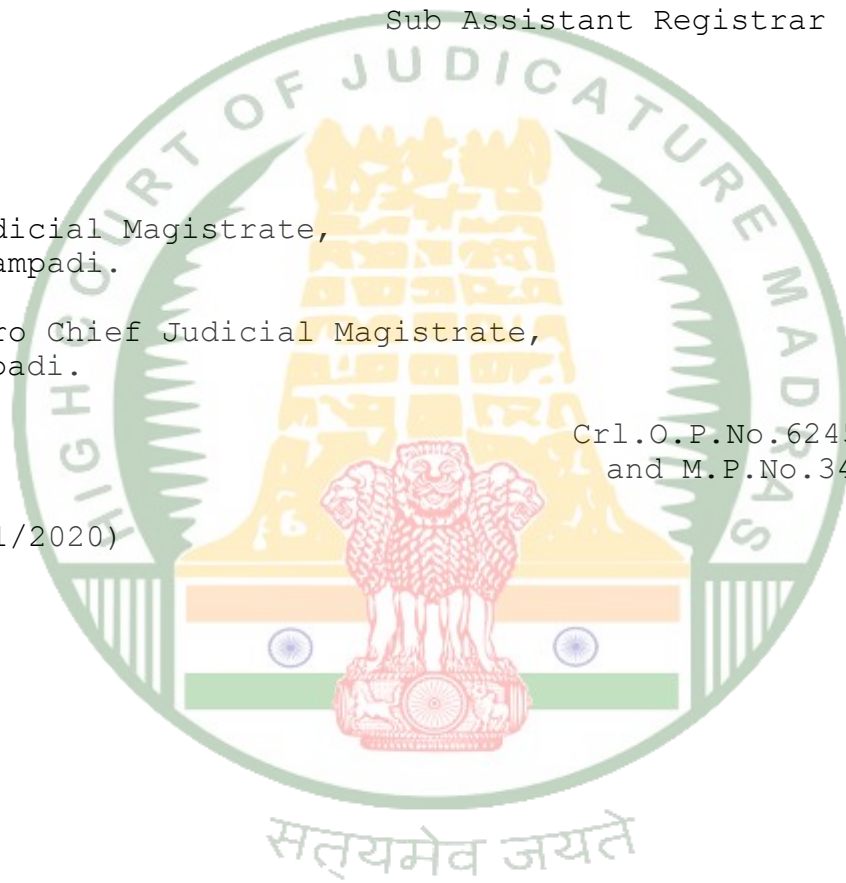
To

1. The Judicial Magistrate,
Vaniyampadi.

2.-do- Thro Chief Judicial Magistrate,
Vaniyampadi.

AJS (CO)
RMP (09/11/2020)

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