

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:31.08.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.Nos.5122, 5143, 5243, 5245 to 5248 of 2020
and M.P.Nos.3357,3359,3362,3349,3351,3347 and 3355 of 2020

MANICKAM ... Petitioner/Accused in Crl OP No.5122 of 2020
DURAI JOSEPH ... Petitioner/Accused in Crl OP No.5122 of 2020
E.BALAJI ... Petitioner/Accused in Crl OP No.5243 of 2020
E.BHASKAR ... Petitioner/Accused in Crl OP No.5245 of 2020
V.CHITRA ... Petitioner/Accused in Crl OP No.5246 of 2020
MANIVANNAN ... Petitioner/Accused in Crl OP No.5247 of 2020
V.KARUPPAIYAN ... Petitioner/Accused in Crl OP No.5248 of 2020

Vs

M.Arvind Bagrecha ... Respondent/Complainant

PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to call for the records pertaining to the impugned complaint filed in C.C.No.1640, 1636, 3204, 1641, 1639, 1638 and 3202 of 2019, respectively, on the file of Metropolitan Magistrate, Fast Track Court No.I, Allikulam, Chennai and quash the same.

For Petitioners in all

Crl.O.Ps : Mr.Thangamani

For Respondents in all

Crl.O.Ps : Mr.P.N.Vignesh

C O M M O N O R D E R

These Criminal Original Petitions have been filed to quash the proceedings in C.C.Nos.1640, 1636, 3204, 1641, 1639, 1638 and 3202 of 2019, respectively, on the file of the learned Metropolitan Magistrate, Fast Track Court No.I, Allikulam, Chennai.

2. The learned counsel for the petitioners submits that the petitioners never borrowed any loan as alleged by the respondent herein and never issued alleged cheques in favour of the respondent herein. They stood as guarantors of the transaction and alleged cheques were issued for security purposes. Subsequently, alleged cheques were filled up by the respondent and presented for collection. There is no absolutely any proof to show that the petitioners borrowed loan from the respondent. Therefore, there is absolutely no legally enforceable debt under the cheques issued by the petitioners herein. The only transaction between the respondent and one debtor viz., Jeeva and Vijayakumar, and allegedly the cheques were received from the petitioners for the purpose of security and they were never issued by the petitioners for any legally enforceable debt in favour of the respondent herein.

3. Per contra, the learned counsel for the respondent would submit that in the year 2016, the respective petitioners have approached the respondent for a loan of Rs.4,00,000/-. The petitioners being the financier, lent money to the petitioners for the interest at the rate of 18% per annum. The petitioners so far paid some amount as interest and subsequently, defaulted in their payment. Thereafter, the petitioners issued alleged cheques originally and when the same were presented for collection and the cheques were returned dishonoured for the reason "insufficient funds". Therefore, the respondent caused legal notice as contemplated under Section 138 of Negotiable Instruments Act and lodged the complaint. Further he submitted that the points raised by the petitioners cannot be considered by this Court under Section 482 of Cr.P.C, since all the points are question of facts.

4. Heard Mr.Thangamani, learned counsel for the petitioners and Mr.P.N.Vignesh, learned counsel for the respondent.

5. On the complaint lodged by the respondent for the offence under Section 138 of Negotiable Instruments Act, the respondent alleged that the petitioners borrowed loan from the respondent and the respondent being the financier lent money for the interest at the rate of 18%. After the petitioners paying some amount as interest and thereafter, defaulted in their repayment of loan, finally, the respective petitioners have issued the cheques in favour of the respondent for the loan amount borrowed by them with interest. The said cheques were presented for collection and the same were returned for the reason "insufficient funds". Hence the present impugned proceedings have been initiated by the respondent.

6. Further, the only ground raised by the petitioners is that the alleged cheques were issued for security purposes that too, they stood as guarantors for the loan transaction between some other persons. Subsequently, without taking any action against original borrower, the respondent simply presented the cheques which were obtained for the security purposes from guarantors namely the respective petitioners herein and presented for collection.

7. Therefore, these points are disputed question of facts and law and it cannot be considered by this Court under Section 482 of Cr.P.C. That apart, it has to be proved before the trial Court by letting in evidence. Therefore, all the petitions are devoid of merits. Accordingly, these petitions are dismissed. However, the petitioners are at liberty to raise all the grounds in the manner known to law. Therefore, 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 (CS-III)

//True copy//

Sub Assistant Registrar

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To

1. The Metropolitan Magistrate, Fast Track Court No.I,
Allikulam, Chennai.

2. The Public Prosecutor, High Court, Madras.

CRL.O.P.Nos.5122, 5143, 5243, 5245 to 5248 of 2020

BS (CO)
GMY (21/09/2020)

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