

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2020

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.11940 of 2020
and
Crl.MP.No.4761 of 2020

1. M/s.Koushic Pressure Vessels Pvt. Ltd.,
represented by Managing Director,
Mr.K.Sreenivasan,
1/150, S.L.R.S.Hospital Road,
Kandipedu Villlage,
Vellore District - 632 106.

2.K.SreenivasanPetitioners

Vs.

1.A.S.Sandeep

2.K.B. Raju

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., seeking to call for the records in C.C.No.2403 of 2013 on the file of the learned FTC-III, Metropolitan Magistrate, Saidapet, Chennai - 15 and quash the same.

For Petitioners : Mr.M.Mohammed Rafi

For Respondents : No appearance

सत्यमेव जयते
ORDER

This Criminal Original Petition has been filed under Section 482 of Cr.P.C., by the petitioners who were arrayed as A1 & A2, in C.C.No. 2403 of 2013 on the file of the learned FTC-III, Metropolitan Magistrate, Saidapet, Chennai - 15, seeking to quash the proceedings by allowing this petition.

2.The Complainants / Respondents are one and the same. The defacto complainant filed a private complaint under Section 138 of the Negotiable Instruments Act, against the petitioners, since the defacto complainant and petitioners are one and the same.

3.The case of the respondents is that the petitioners issued various cheques in the year 2011 and the said cheques were dishonored. Thereafter, legal notice was issued by the complainants and since the amount was not paid, they filed a complaint under Section 138 of Negotiable Instruments Act. Challenging the said complaints, the present petition has been filed.

4.Mr.M.Mohammed Rafi, learned counsel appearing for the petitioners submitted that though the defacto complainants and respondents 1 & 2 are one and the same in the private complaint, however, the present, challenge before this Court is on the following grounds.

(i) There are two complainants in the complaint which is not permissible under Section 200 of Cr.P.C. for the offence under Section 138 of Negotiable Instruments Act and

(ii) No cheques were issued by the two persons, but the cheques were issued only by one person and hence filing of the complaint by the two persons under Section 138 of Negotiable Instruments Act, is unsustainable one and the said issue has already been considered by this Court.

5. Learned counsel for the petitioners relied upon the decision of this Court reported in (2011) 4 MLJ (Cr1) 198 [Maheswari & Others V. Jayanthi & another] wherein it is held that if there are more than one complaint, it will be difficult for the Magistrate to form an opinion for taking cognizance of an offence. This applies to the power of attorney of two complaints also. Therefore, the joint complaint given by two persons is not maintainable and liable to be quashed and the said ratio was followed in yet another judgment of this Court in Cr1.OP.NO.9919 of 2019 [T.Ravi vs. T.Kamakshi and one another]. Accordingly, he prays to allow this petition.

6.Notice was ordered, however, no one appeared on behalf of respondents 1 & 2, hence this Court ordered Paper Publication and the names of respondents 1 and 2 were also printed in the cause list. Even then, there is no appearance on behalf of the respondents 1 and 2 and hence left with, no other option, this Court proceeds to decide the case on merits based on the available records.

7. A perusal of the decisions cited by the learned counsel for the petitioners, it is evident that multiple complaints are per se impermissible in case of the same transaction. However, the materials available on record reveal that complaints have been filed by the defacto complainants in C.C.No.2403 of 2013

with regard to the very same offence. The above act of the defacto complainants is diametrically against the ratio laid down by this Court in the decisions cited supra. In the absence of the respondents 1 and 2/defacto complainants appearing to defend their case inspite of very many opportunities granted by this Court, this court is of the considered view that not only the respondents are not inclined to defend their case, but equally, the case being squarely covered by the decisions aforesaid, this Court is of the considered view that the prayer for quashment as made by the petitioners deserves to be allowed.

8. Accordingly, this Criminal Original Petition stands allowed and the proceedings in C.C.No.2403 of 2013 on the file of the learned FTC-III, Metropolitan Magistrate, Saidapet, Chennai - 15, are quashed. Consequently, connected miscellaneous petition is closed.

Sd/--

Assistant Registrar

// True Copy//

Sub Assistant Registrar

gv

To

The learned FTC-III, Metropolitan Magistrate,
Saidapet, Chennai - 15.

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SPD(CO)
GS(22/10/2020)

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