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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. Nos. 17629 & 17586 of 2019
and

Crl.MP. Nos. 8895, 16034 of 2019 & 8882 & 16046 of 2019

R.Sumathi @ Sumathiravi
W/o.N.Ravi
N.Ravi
S/o.Nagamani

... Petitioner in
Crl.O.P. No. 17629 of 2019
... Petitioner in
Crl.O.P. No. 17586 of 2019

Vs.

M.Sithayyan

... Respondent in both Crl.O.Ps

Prayer in Crl.O.P. No. 17629 of 2019: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records relating to the S.T.C. No. 69 of 2019 on the file of Learned Judicial Magistrate II, Bhavani, Erode District and quash the same.

Prayer in Crl.O.P. No. 17586 of 2019: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records relating to the S.T.C. No. 68 of 2019 on the file of Learned Judicial Magistrate II, Bhavani, Erode District and quash the same.

For Petitioners : Mr.Muthukumaran J.
(In both Crl.O.Ps)

For Respondent : Mr.Adinarayana Rao
(In both Crl.O.Ps)

COMMON ORDER

The petitions have been filed to quash the proceedings for the offences punishable under Sections 138 & 142 of the Negotiable Instruments Act, 1881 in S.T.C. Nos. 68 & 69 of 2019 on the file of Learned Judicial Magistrate II, Bhavani, Erode District, as against the petitioners.

2. The learned Counsel appearing for the petitioners would submit that the Respondent/Complainant is a stranger to



the Petitioners and they never borrowed any amount from the Respondent, infact the Petitioners borrowed a sum of Rs. 5,00,000/- from one E.Saranya, neighbor of the Petitioners running the business under the name and style of M/s.K.R.S. Automotives and Sriram Industries in the year 2014 and the said E.Saranya block mailing the Petitioners and set up the Respondent to deposit the blank cheque leaves issued by the Petitioners and first of their title is also mortgage deed. After repaying the said loan amount, he also redeemed mortgage. At the time of borrowing the loan, he had given signed blank cheque leaves as security. The said signed blank cheque leaves were now utilized by the Respondent/Defacto complainant and initiate 138 proceedings for the offences punishable under Sections 138 & 142 of NI Act, 1881.

3. The learned counsel for the Respondent would submit that the loan borrowed by the Petitioners from one E.Saranya has been repayed and the mortgage deed also redeemed by the Petitioners. Insofar as the Respondent is concerned, he lent money on the said notice issued to the Petitioners for the non-payment of loan in which they borrowed the loan from the Respondent and towards the repayment of the said loan, the petitioners issued cheques. Therefore, they pray to quash the petition.

4. Heard Mr.Muthukumaran J, learned counsel appearing for the petitioners and Mr.Adinarayana Rao, learned counsel for the respondent.

5. The only point raised by the Petitioners herein is that the Respondent is a stranger and the Petitioners never borrowed any amount from the Respondent/Defacto Complainant. In fact, they borrowed money from their neighbor aforesaid E.Saranya and therefore it was also used. While borrowing the amount, the Petitioners hand over the blank cheques to the said E.Saranya and the same has been utilized by the Respondent herein and filed complaint under Section 138 of NI Act. These facts cannot be considered under Section 482 Cr.P.C. Since all the points raised by the Petitioners are disputed question of fact. Therefore, this Court is not entertain the present Petitions and quash the proceedings.

6. Considering the facts and circumstances of the case, the personal appearance of the petitioners is dispensed with. Their case shall be represented by the counsel after filing appropriate application. However, 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. The trial Court is directed to complete the trial within a period of six months from the date of receipt of copy of this Order.



7. Accordingly, the Criminal Original Petitions stand dismissed. Consequently, connected miscellaneous petitions are also closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

arb

To

1. The Judicial Magistrate II,
Bhavani, Erode District.
2. The Chief Judicial Magistrate,
Erode.

+1cc to Mr.J.Muthukumar, Advocate SR.22772
+2cc to Mr.Adinarayana Rao, Advocate SR.23272

Crl.O.P. Nos. 17629 & 17586 of 2019
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VBA(CO)
CB(13/07/2020)