



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2021

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CrI.O.P.Nos. 22989 to 22992 of 2016
and
CrI.M.P.Nos.10777 to 10784 of 2016

N. Anbarasan ...Petitioner/Accused
(in all CrIOPs)

/Vs/

M.Vairasamy ... Respondent/Complainant
(in all CrIOPs)

Common Prayer:

Criminal Original Petitions filed under section 482 of Criminal Procedure Code, to call for the records in C.C.Nos. 486, 487, 488 and 489 of 2016 on the file of FTC-IV Metropolitan Magistrate, George Town, Chennai and to quash all further proceedings.

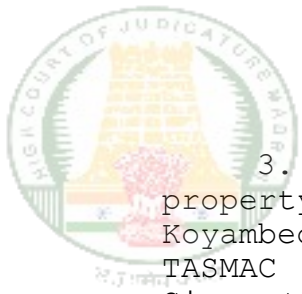
For Petitioner/Accused : Mr.S. Balasubramanian
(in all CrIOPs)

For Respondent/Complainant : Mr.Liagat Ali
(in all CrIOPs)

COMMON ORDER

The petitioner has filed the present petitions under Section 482 of the Criminal Procedure Code, to call for the records pertaining to the case in C.C.Nos. 486, 487, 488 and 489 of 2016 respectively, on the file of Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai, and to quash the entire proceedings initiated against him.

2. The respondent/complainant filed a criminal complaint before the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai, against the present accused for an alleged offence punishable under section 138 of Negotiable Instruments Act, (hereinafter referred to as the "NI Act") 1881.



3. The case of the respondent/complainant is that the house property situated at No.417, M.G.R. Street, Bharathi Nagar, Koyambedu, Chennai - 600 107, is belonged to him for running TASMAC Shop and attached bar to the TASMAC (Shop Nos.20 & 21). Since there were some misunderstandings between the petitioner and the respondent, the petitioner has not paid the rent regularly. The petitioner is a tenant under the respondent/complainant in respect of a TASMAC Shop with attached bar, and he was paying rent in a sum of Rs.75,000/-per month. The petitioner/accused had borrowed a sum of Rs.75,000/- from the respondent on 05.03.2015. It is the further case of the respondent/complainant that towards the discharge of the amount due to him, the petitioner/accused issued five cheques bearing Nos.(i) 847249, (ii) 847251, (iii) 847253, (iv) 847254 and (v) 847255 dated 05.11.2015 for a sum of Rs.75,000/- drawn on IndusInd Bank, Aminjikarai Branch, Chennai, in favour of the respondent/complainant. When the cheques were presented for an encashment/realization by the respondent/complainant herein through his bankers viz., State Bank of India, Elephant Gate Branch, Chennai, the same was returned for the reason "insufficient funds" on 07.12.2015. Therefore, the respondent/complainant issued a statutory notice to the petitioner/accused on 24.12.2015 and after receiving the legal notice on 26.12.2015, the petitioner/accused had not come forward to pay the said cheque amount till date. Hence, he has filed the complaint in C.C..Nos.486, 487, 488 and 489 of 2016 before the Court below under Section 138 of the NI Act.

4. Mr.S.Balasubramanian, the learned counsel appearing for the petitioner/accused contended that even as per the complaint, the petitioner/accused borrowed money from the respondent/complainant and cheque bearing No.847253 was issued for the purpose of payment of rent for the premises owned by the respondent/complainant. He would therefore submit that the complaint filed by the respondent under Section 138 of the Negotiable Instruments Act, 1881 is not maintainable. Without considering the above aspects, the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai, has committed an error by taking cognizance of the offence under Section 138 of Negotiable Instruments Act, 1881. He relied upon the decision in the case of Venkatesh Bhat v. Rohidas Shenoy, reported in [(2010) CrI.L.J. 1061], wherein it has been held in Para No.11 as follows:-

"11. Since the valid execution of Ex.P1 agreement and issue of cheque in question by the accused to the complainant in terms thereof, are seriously questioned, findings as to, 'whether the said agreement was entered into by the accused with the complainant with his free consent'; 'whether he issued the said



that he has also issued cheques for a sum of Rs.75,000/- towards payment of rent for the rented premises and the same was returned with an endorsement "insufficient funds".

7. When there are prima facie materials against the present petitioner, the entire proceedings cannot be quashed, especially when there is a clear-cut statement in the complaint that the accused gave an assurance to the complainant to pay the rental amount of Rs.75,000/- as agreed between the parties. As rightly pointed out by the learned counsel appearing for the respondent/complainant, the question as to whether the cheques were issued in discharge of the debt or not, is a matter of evidence and a question of fact, which can be gone into only at the time of trial. The points raised by the petitioner/accused cannot be decided in this petition filed under section 482 of the Code of Criminal Procedure. The decision relied on by the learned counsel for the petitioner, is distinguishable to the facts of the present case.

8. However, the petitioner can raise all these points before the Trial Court at the time of trial. The learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai, is directed to complete the trial within a period of three months from the date of receipt of a copy of this order.

9. With the above directions, the Criminal Original Petitions are dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

msm

To

1. The Metropolitan Magistrate,
Fast Track Court No.IV, George Town, Chennai.

+2cc to Mr.S.Balasubramanian, Advocate, S.R.No.34190, 34191
+1cc to Mr.M.Liagat Ali, Advocate, S.R.No.34370

Crl.O.P.Nos. 22989 to 22992 of 2016
Crl.M.P.Nos.10777 to 10784 of 2016

GPL(CO)
RGA(27/08/2021)