



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2021

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.O.P.No.14322 of 2018
and Crl.M.P.No.7241 of 2018

1. M/s.Ramraj Industries,
Rep. by its Partners,
Kilmurugai Village,
Ambur, Vellore District.
 2. P.Mangaiyarthilagam,
Partner of M/s.Ramraj Industries
 3. P.Rajasekar,
Partner of M/s.Ramraj Industries
 4. P.Ram Kumar,
Partner of M/s.Ramraj Industries
- .. Petitioners/Accused No. 1 to 4
- Vs.

P.Suresh Babu

.. Respondent/Complainant

Prayer: Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure, to call for the records of S.T.C.No.152 of 2018 pending on the file of the Additional District cum Judicial Magistrate, Ambur, Vellore District and quash the same.

For Petitioners : Mr.S.P.Arthi

For Respondent : Ms.S.Thamizharasi

ORDER

This petition has been filed to call for the records in S.T.C.No.152 of 2018, pending on the file of the Additional District cum Judicial Magistrate, Ambur, Vellore District and quash the same.

2. The case of the prosecution is that A1 is a Company,



A2 to A4 are the partners of the said Company. The accused Company is involved in manufacturing activities in leather. The 3rd petitioner was a close friend of the complainant and petitioners 2, 3 and 4 were co trustee in Prem Educational Trust with the complainant. Taking advantage of the friendship with the complainant and his family, the accused have borrowed Rs.45,00,00/- as hand loan in cash on various dates from the complainant to meet out the business needs of the 1st petitioner Company and assured to repay the amount within a short span of time. Thereafter, after several demands made by the complainant, the petitioners have issued cheque for Rs.45 lakhs dated 17.02.2018, to discharge their liability. However, the said cheque was returned with endorsement ''Refer to Drawer'' and the same was informed to the complainant. The complainant had sent legal notice to the accused on 12.03.2018, and in turn, the accused also issued reply to the said legal notice and since no valid reasons for non payment of dues was assigned, the complaint was filed under Section 138 of the Negotiable Instruments Act against the petitioners in S.T.C.No.152 of 2018, on the file of the Additional District cum Judicial Magistrate, Ambur, Vellore District. Challenging the same present petition is filed.

3. The learned counsel appearing for the petitioners submitted that the 1st petitioner is a Partnership Firm and the petitioners 2 to 4 are its partners and all are family members. The entire business administration is solely taken care by the 3rd petitioner herein and petitioners 2 and 4 are not interfering with the affairs of the Company. It is submitted by the learned counsel appearing for the petitioner that the true fact is that the 3rd petitioner and the respondent were trustees in a private trust, which was started by the 3rd petitioner. The 3rd petitioner was removed from the above said trust on fictitious and false allegations and the same has been challenged by the 3rd petitioner before the appropriate forum. The 3rd petitioner is doing various businesses including running a School and is in the habit of travelling both within and outside India and used to hand over signed cheques to the school management authorities and it appears that one such cheque had been misused by the respondent herein. He further made a submission that the 3rd petitioner, only upon receipt of the notice from the respondent, came to know about the misuse of the cheque. The petitioners having not borrowed any amount from the respondent, they are not liable to repay any sum to the respondent. The respondent with an ulterior motive to harass the petitioners, has hurriedly initiated the 138 proceedings with false claims and untrue allegations and misusing the judicial forum. Even the complaint lodged against the petitioner is also very vague, which does not disclose any details with regard to the borrowed sums on various dates.



4. It is further submitted by the learned counsel appearing for the petitioners that the entire transactions were between the 3rd petitioner and the respondent. The petitioners 2 and 4 have no role to play in the above said proceedings and therefore, the 138 proceedings against the petitioners 2 and 4 are not sustainable and further on instructions, he submitted that the petitioners 1 and 3 are ready to face the trial and therefore, this Court may issue a direction to the Trial Court to expedite the trial and complete the same as early as possible and furthermore, the appearance of the petitioners before the Trial Court may be dispensed with. Hence prays for allowing of these petitions against petitioners 2 and 4.

5. The learned counsel appearing for the respondent fairly conceded for quashing the complaint in respect of petitioners 2 and 4 and opposed to grant relief to the petitioners 1 and 3, as they are responsible for all business related transactions and directly involved into the affairs of the Company.

6. This Court has carefully considered the rival submissions and also perused the available materials, particularly, the private complaint lodged by the respondent.

7. Though various allegations are made against the petitioners, it is the case of the petitioners that the petitioners 2 and 4 were not involved in any business transactions. Further it is the claim of the petitioners that they are not liable to repay any sums so claimed by the respondent, as they have not borrowed any amount.

8. Further without any details as to how the petitioners 2 and 4 herein, in their capacity as partners were responsible for the issuance of the cheques, implicating the petitioners 2 and 4 for the offence under Section 138 of the Negotiable Instruments Act is not justifiable. Further, the said fact has also been fairly conceded by the respondent. Hence this Court is inclined to quash the complaints against the petitioners 2 and 4. Insofar as the petitioners 1 and 3 are concerned, on the submission made by the learned counsel for the petitioners, on instructions, that the petitioners 1 and 3 are ready to face the trial and further the 3rd respondent himself admitted that he placed orders for purchase of the above said raw materials and reiterates that the entire business activities and its related transactions were solely dealt with by him, this Court is of the opinion that he shall face trial before the Trial Court. It is left open to the petitioners 1 and 3 to raise all the contentions before the Trial Court and the same shall be considered on its own merits and in accordance with law.



9. For the reasons aforesaid, this Criminal Original Petition is allowed insofar as petitioners 2 and 4 are concerned and S.T.C.No.152 of 2018, pending on the file of the Additional District cum Judicial Magistrate, Ambur, Vellore District, is quashed insofar as petitioners 2 and 4.

10. In respect of petitioners 1 and 3, these petitions are disposed of directing the trial court to dispose of S.T.C.No.152 of 2018, as expeditiously as possible as per seniority of the case. The petitioners and respondent are directed to co-operate with the trial court for the early completion of trial. Further, taking into consideration the request as made by the learned counsel for the petitioners, the appearance of petitioners 1 and 3 before the trial court is dispensed with except for their appearance for the purpose of receiving the copy of the proceedings u/s 207 Cr.P.C., framing of charges, questioning under Section 313 Cr.P.C. and on the day on which judgment is to be pronounced. However, if for any particular reason, the presence of the petitioners is necessary, the trial court, at its wisdom, shall direct their appearance on those days.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District cum Judicial Magistrate,
Ambur, Vellore District.
2. The Public Prosecutor,
High Court, Madras.
- 3.-Do Thro Chief Judicial Magistrate,
Vellore.

+1cc to Ms.S.Thamizharasi, Advocate, S.R.No.45702

Crl.O.P.No.14322 of 2018

CA(CO)
CT 06/12/2021