



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.O.P.No.8332 of 2021

1.Sri Siva Sai Industries
No.50, Kailasanathar Koil Street,
Padi, Chennai 600 050.

2.R.Antony David

... Petitioners

Versus

Shankar Narayanan K

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records of complaint dated 24.10.2020 in C.C.No.3408 of 2020 on the file of the learned Metropolitan Court No-I, (FTC) Egmore, Chennai and quash the proceedings same in accordance with law.

For Petitioners : Mr.T.Vijayashankar

ORDER

This petition has been filed to call for the records of complaint dated 24.10.2020 in C.C.No.3408 of 2020 on the file of the learned Metropolitan Court No-I, (FTC) Egmore, Chennai and quash the proceedings same in accordance with law.

2. The petitioner/accused in C.C.No.3408 of 2020, who is facing trial before the Fast Track Court No.I, Egmore, Chennai, for the offence under Section 138 of the Negotiable Instruments Act, has filed this quash petition.

3. The gist of the case is that the second petitioner/ second accused was initially appointed as Power of Attorney to the respondent/complainant to deal with his property at Thiruvallur District. In view of the same, he executed a Power of Attorney in Document No.110/2003 in SRO Office at Triplicane. In pursuance of the General Power of Attorney, dated 28.03.2003, the accused sold some plots and received sale



consideration from the purchasers, but failed to pay the entire sale consideration to the respondent. Since the second petitioner has not acted as per the Power of Attorney, failed to furnish proper accounts, the respondent cancelled the Power of Attorney by Document No.210/2004 on 06.05.2004. Thereafter, the petitioner created forgery document on 30.12.2005 in Doc.No.640 of 2005 and using the forged document, created encumbrance and alienated the property.

4. On coming to know about the same, the respondent lodged a complaint before the CCB and a case was registered in Crime No.186 of 2018 on 14.05.2018 against the petitioners for the offence under Sections 419, 465, 467, 468, 471 and 120(B) IPC. Subsequent to the registration of the criminal complaint, immediately Memorandum of Understanding (MOU) was entered between the second petitioner and the respondent on 02.05.2019. As per the MOU, the second petitioner agreed to pay a sum of Rs.1,20,00,000/- (Rupees One Crore Twenty Lakhs Only) by way of five cheques for various amounts. One of the cheque bearing No.000127 dated 10.08.2019 drawn in favour of Karur Vaysia Bank Branch, issued by the petitioner, was deposited in the Bank and the same got dishonoured. Later, statutory notice was issued. Following the statutory provision, 138 complaint filed.

5. The contention of the petitioners is that the respondent/complainant had lodged a police complaint against the petitioner in Crime No.186 of 2018. Thereafter, on 02.05.2019 MOU was entered between the second petitioner and the respondent and the petitioner was forced to issue the cheques and he has not handed over the cheques for discharge of his liability. Hence, on this ground, he has filed this quash petition. Earlier the petitioner filed a quash petition for quashing Crime No.186 of 2018, which was disposed of. The main contention of the petitioner is that at one breath, the cheques have been received to settle the dispute and on the other hand, without withdrawing the criminal complaint, it is been pursued and charge sheet filed.

6. On perusal of the materials and typed set filed by the petitioner it is seen that subsequent to the registration of Complaint, an MOU was entered between the second petitioner and the respondent and the cheques were issued as per the MOU. The respondent not disputed the same. The respondent filed the above complaint since no proper accounts furnished. Further after discharging the liability, the continuation of the criminal complaint in Crime No.186 of 2018 is not proper, as the



petitioner ought to have been absolved from the above case. Admittedly the petitioner had not complied with the Memorandum of Understanding. Failed to make payments to the respondent. On the facts of the case continuation of prosecution in Crime No.186 of 2018 and C.C.No.3408 of 2020, for offence under Section 138 of Negotiable Instruments Act, both are legally permissible. The points raised by the petitioner are factual in nature, which to be raised during trial.

7. In view of the same, this Court is not inclined to entertain the petition. The petitioner to raise all these points before the trial Court.

8. Accordingly, this Criminal Original Petition is dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

dna

To

The Metropolitan Court No-I, (FTC) Egmore,
Chennai.

+1CC to M/s.T.Vijayshankar, Advocate SR No.29250

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PMK (CO)
PR (16/07/2021)