

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.Nos.17923, 17924, 17925, 17926, 17927, 17928, 17929,
17930, 17931, 17932, 17933, 17936, 17939 and 17943 of 2021

and

Crl.M.P.Nos.9855, 9856, 9857, 9858, 9861, 9859, 9862, 9864,
9866, 9865, 9867, 9869, 9870 and 9872 of 2021

- 1.P.Kandasamy ... Petitioner/Accused in Crl.O.P.Nos.17923,
17924,17925, 17926, 17927, 17928, 17931,
17932, 17933, 17936 and 17943 of 2021
- 2.S.K.Shanmugam ... Petitioner/Accused in
Crl.O.P.Nos.17929, 17930 of 2021
- 3.P.Jayalakshmi ... Petitioner/Accused in
Crl.O.P.No.17939 of 2021

Versus

1. M/s.Vaiera Manikandan Finance,
Represented by its Managing Partner,
A.Chellapillai,
Akilandamman Street,
Dhoramangalam Village,
Jalakandapuram Post,
Mettur Taluk,
Salem District. ... Respondent/Complainant in Crl.O.P.
Nos.17923, 17927, 17928 and 17393 of 2021
2. M/s.Sri Manikandan Finance,
Represented by its Managing Partner,
A.Chellappillai,
Akilandamman Street,
Dhoramangalam Village,
Jalakandapuram Post,
Mettur Taluk,
Salem District. ... Respondent/Complainant in
Crl.O.P.Nos.17925, 17926 and 17931 of 2021

3. M/s.Rajhakalai Finance,
Represented by its Managing Partner,
A.Chellapillai,
Akilandamman Street,
Dhoramangalam Village,
Jalakandapuram Post,
Mettur Taluk,
Salem District.

... Respondent/Claimant in Crl.O.P.
Nos.17929, 17930, 17932, 17936 and 17943 of 2021

4. A.Chellapillai,
Akilandamman Street,
Dhoramangalam Village,
Jalakandapuram Post,
Mettur Taluk,
Salem District.

... Respondent/Claimant in Crl.O.P.
Nos.17924 & 17933 of 2021

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.M.P.Nos.2669, 2662, 2664, 2663, 2661, 2668, 2658, 2665, 2659, 2667, 2660, 2666, 2657 and 2656 of 2021 in S.T.C.Nos.393, 454, 413, 394, 453, 410, 415, 412, 423, 511, 424, 563, 166 and 562 of 2007 respectively on the file of the learned Judicial Magistrate No.II Court at Mettur Dam, dated 23.08.2021 to set aside the same and allow this Crl.O.P.

For Petitioners : Mr.M.Raja Sekhar in all cases

COMMON ORDER

All these Criminal Original Petitions have been filed to set aside the orders, dated 23.08.2021 in C.M.P.Nos.2669, 2662, 2664, 2663, 2661, 2668, 2658, 2665, 2659, 2667, 2660, 2666, 2657 and 2656 of 2021 in S.T.C.Nos.393, 454, 413, 394, 453, 410, 415, 412, 423, 511, 424, 563, 166 and 562 of 2007 respectively passed by the learned Judicial Magistrate No.II, Mettur.

2.For the sake of convenience and clarity, the petitioners and the respondents are referred as accused and complainant as per complaint.

3.The accused have filed totally 14 petitions in C.M.P.Nos.2669, 2662, 2664, 2663, 2661, 2668, 2658, 2665, 2659, 2667, 2660, 2666, 2657 and 2656 of 2021 in S.T.C.Nos.393, 454, 413, 394, 453, 410, 415, 412, 423, 511, 424, 563, 166 and 562 of 2007 before the trial Court to reopen all the cases and permit them to lead evidence. The trial Court, by order, dated 23.08.2021, dismissed all the petitions.

4.The background of these cases is that the accused Kandhasamy, is a registered TWAD Board Contractor, who entrusted with the contract work for Karur District in the year 2004. For executing the work and for business needs, the accused Kandhasamy availed loan from the complainant and handed over cheques, which got dishonoured and hence, the complaints under Section 138 of the Negotiable Instruments Act were lodged and the same have been pending from the year 2007 onwards.

5.In all these complaints, for business transactions, all the three accused have handed over cheques in discharge of their liability are narrated. Of the 14 cases, in 12 cases, it is Kandhasamy, who is the accused and in two cases, his son Shanmugam and in one case, his daughter-in-law Jayalakshmi. The accused Kandhasamy admitted that it is his son Shanmugam who was in active role in the entire business transaction of TWAD contract work and its financial dealing with the complainant. The cross examination on the complainants is on this line. The accused Shanmugam examined himself as defense witness in S.T.C.No.415 of 2007 and marked 128 documents. From his evidence, it is seen that he deposed about the entire transactions with the complainants covering all the cheques, its defence in all 14 cases. The trial Court finding that all the accused were dragging the case for one reason or other and the trial has been pending from the year 2007, had closed the evidence of DW1 on 20.04.2021. The accused for tactful reason not examined himself as defence witness in balance 13 cases, despite all the cases were posted together periodically. On 30.07.2021, a petition under Section 317 Cr.P.C., filed by all three accused took exemption from appearance. As regards the accused Shanmugam is concerned, it was mentioned that he was not well and sought adjournment. The trial Court condoned the absence, accepted the petition under Section 317 Cr.P.C., and closed the defense side evidence on the same day and posted the cases for arguments on 06.08.2021.

6.On perusal of the order of the trial Court, dated 23.08.2021, it is seen that these cases had a long travel from the year 2007 onwards. Earlier, a petition under Section 311 Cr.P.C., to recall PW1 for cross examination was filed in all the 14 cases and the same was rejected by the trial Court on 06.09.2010, as against which, the accused preferred petitions

before this Court in CrI.O.P.Nos.1251 to 1264 of 2011, in which this Court by order, dated 20.01.2011, set aside the trial Court order and permitted the accused to recall PW1 and to cross examine, aggrieved against the same, S.L.P(CrI.)No.2128 of 2011 was filed by the complainants before the Hon'ble Apex Court. The Hon'ble Apex Court, by order, dated 04.01.2012 set aside the order of this Court, dated 20.01.2011 and remitted back the cases for fresh consideration. The accused filed a memo to issue summons to examine TWAD Executive Engineer and Assistant Engineer and the same were rejected, against which they filed CrI.O.P.Nos.3714, 3737, 3738, 3739, 3740, 3717, 3742, 3750, 3762, 3744, 3795, 3812, 3902, 4685 of 2020. This Court, decided all the petitions along with CrI.O.P.No.1251 to 1264 of 2011 and found that PW1 already elaborately cross examined and further summoning TWAD Engineers is not necessary and not required on the facts and circumstances of the case and dismissed all the petitions, by order, dated 01.10.2020 and directed the trial Court to complete the trial within a period of three months. Thereafter, the accused took adjournments informing the trial Court that they intended to prefer appeal before the Hon'ble Apex Court against the order of this Court, dated 01.10.2020. Despite several adjournments, the accused not filed any appeal before the Hon'ble Apex Court and hence, the trial Court proceeded with the trial. On 23.11.2020, a memo was filed informing that transfer applications were filed before the learned Principal District Court, Salem. Thereafter, these transfer applications were dismissed on 16.02.2021.

7.Earlier, the accused Shanmugam examined as DW1 in S.T.C.No.415 of 2007 on 05.03.2019 and 22.02.2021. Citing the joint trial memo, further chief examination of DW1 was kept on hold. After rejection of the joint trial memo, the chief examination of the accused continued on 01.04.2021, 08.04.2021 and completed on 20.04.2021 and he marked Exs.D1 to D108. In one case in S.T.C.No.415 of 2007, the accused Shanmugam examined himself as defence witness and sought time to examine himself as DW1 in balance 13 cases separately. The trial Court finding the dilatory tactics adopted by the accused, considering the cases have been pending from the year 2007, dismissed the petitions, by order, dated 23.08.2021. Hence, the accused are before this Court now.

8.It is seen that the trial court, by order, dated 23.08.2021 not only dismissed the petition filed by the accused, it also dismissed the petition filed by the complainants to reopen, recall and receive additional documents.

9.This Court considered the rival submissions and perused the materials produced.

10.In all the complaints, the transaction between the complainants and all the three accused are narrated in detail in a comprehensive manner. From the evidence and materials, it is seen that the witnesses have spoken about the entire transactions between the accused and the complainants. The accused Shanmugam, who is the son Kandhasamy and husband of Jayalakshmi had examined himself as DW1 in S.T.C.No.415 of 2007. He has deposed not only for himself, but also for his father Kandhasamy and his wife Jayalakshmi about the entire transaction. Now, again examining the accused Shanmugam as defence witness in other 13 cases a fresh, would no way improve the case of the accused. Since the facts in issue and the defence are almost similar and covered in the evidence of the accused Shanmugam, the defence already formulated and brought on record.

11.Thus, this Court finds that the examination of the accused Shanmugam separately in the remaining cases is not necessary. It would only further protract the trial. It is also not in dispute that all the 13 cases are posted together, but independently evidences were recorded. Hence, the delay cannot curtail the right of the accused, more so in case the presumption in favour of complainant, the accused necessarily to probablize his defence.

12.In view of the same, it would be appropriate that the evidence of the accused Shanmugam recorded in S.T.C.No.415 of 2007 to be taken as defence evidence in other 13 cases. The only requirement is that the concerned accused to file a memo to this effect before the trial Court and the complainant cannot have any objection for the same. Thereafter, the trial Court to take the evidence, consider the defence of the accused in all the cases. Such exercise will not be embargo an and it would be beneficial for the complainant, accused and the Court to arrive at a just decision of the case.

14.With the above observations, this Criminal Original Petitions stand dismissed and the orders, dated 23.08.2021 passed by the trial Court is confirmed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

To

The Judicial Magistrate Court No.II,
Mettur.

+1cc to Mr.Raja Sekhar, Advocate, S.R.No.54544 (31/03/2022)

CRL.O.P.Nos.17923, 17924, 17925, 17926,
17927, 17928, 17929, 17930, 17931,
17932, 17933, 17936, 17939 and 17943 of 2021

NMI (CO)
SU(25/10/2021)