



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.11.2021

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CrI.O.P.No.6157 of 2017 &
CrI.M.P.Nos.4594 & 4595 of 2017

1. M/s.Gems Engineers,
No.42, Keronai Village,
Koduveli - Post,
Avadi (I.A.F.),
Chennai - 600 055.

2. M/s.Gems Engineers,
rep. by its partner Mr.Senthil,
Age 37, No.42, Keronai Village,
Koduveli (P.O.),
Avadi (I.A.F.),
Chennai - 600 055.

...Petitioners/Accused

Vs

Boon Enterprises rep. by
its proprietor Mr.Tahir
S/o.Shabbir,
No.6, Mclean Street,
Broadway, Near Loansquare,
Chennai - 600 001.

...Respondent/Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for records pending on the file of the learned VII Metropolitan Magistrate, George Town, Chennai in C.C.No.373 of 2017 and to quash the same.

For Petitioners : Mr.R.Thirumoorthy

For Respondent : Mr.Silambarasan
for Mr.M.Venu Gopal

O R D E R

This petition has been filed to quash the charge sheet in C.C.No.373 of 2017, pending on the file of the learned Metropolitan Magistrate No.VII, George Town, Chennai for the



offence under section 138 of Negotiable Instruments Act.

2. The main contention of the 2nd petitioner is that after issuance of the cheque, he has paid the cheque amount through RTGS transaction to the account of the complainant herein. Therefore, once amount is paid, there is no legally enforceable debt. In other words, the debt has already been discharged. Therefore maintaining the prosecution against the petitioners is nothing but abuse of process of law. Whereas the learned counsel appearing for the respondent disputed such a payment.

3. When the submission of the learned counsel appearing for the petitioners as to the discharge of money is disputed, such disputed facts cannot be gone into at this stage. It is to be noted that whenever a plea of discharge is taken, the initial onus to prove the plea of discharge lies on the petitioners. The same has to be gone into during the trial. In such view of the matter, this Court is not inclined to entertain this petition.

4. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed. The accused is directed to appear before the trial Court within two weeks from the date of receipt of a copy of this order and file an application under Section 436 of Code of Criminal Procedure. On such filing of the application, trial Court is directed to release the petitioners on bail on the same day on executing a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) each with two sureties. If thereafter, he absconds, a fresh FIR can be registered under Section 229 A of the Indian Penal Code.

Sd/-

Assistant Registrar(CS-IX)

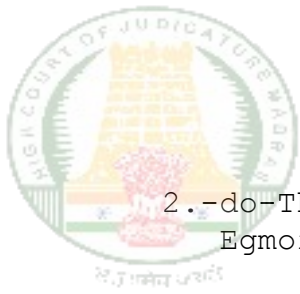
// True Copy //

Sub Assistant Registrar

vrc/kbs

To

1.The VII Metropolitan Magistrate,
George Town,
Chennai.



2.-do-Thro' The Chief Metropolitan Magistrate,
Egmore, Chennai-8.

WEB COPY

Crl.O.P.No.6157 of 2017 &
Crl.M.P.No.4594 & 4595 of 2017

BS (CO)
CB (02/12/2021)