



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.Nos.26090, 26094, 26098, 26099, 26100, 26102,
26892 and 26932 of 2018

and

Crl.M.P.Nos.14978, 14979, 14980, 14982, 14983, 14984,
15520, 15521 15545, 15546 of 2018

Crl.O.P.No.26090 of 2018 :

Mr.O.Venkatachalapathy ...Petitioner / Accused-3

Vs.

G.Sarojini ...Respondent / Complainant

Crl.O.P.No.26094 of 2018 and Crl.O.P.No.26098 of 2018 :

Mr.O.Venkatachalapathy ...Petitioner / Accused-3

Vs.

S.Govindarajan ...Respondent / Complainant

Crl.O.P.No.26099 of 2018 :

Mr.O.Venkatachalapathy ...Petitioner / Accused-3

Vs.

G.Sathiamurthy ...Respondent / Complainant

Crl.O.P.No.26100 of 2018 and Crl.O.P.26892 of 2018 :

Mr.O.Venkatachalapathy ...Petitioner / Accused-3

Vs.

S.Umarani ...Respondent / Complainant

Crl.O.P.No.26102 of 2018 and Crl.O.P.26932 of 2018 :

Mr.O.Venkatachalapathy ...Petitioner / Accused-3

Vs.

G.Sathiyamurthy ...Respondent / Complainant



COMMON PRAYER : Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure, to call for the complaint and entire records in S.T.C.Nos. 722, 720, 740, 724, 739, 721, 2687 and 2690 of 2017, respectively, on the file of the learned Judicial Magistrate No.III (in S.T.C.Nos.722, 720, 740, 724, 739, 721 of 2017 and IV (in S.T.C.Nos.2687 and 2690 of 2017), Salem.

For Petitioner in all petitions : Mr.J.Hariharan
for M/s.KV Law Firm

For Respondent in all petitions : Mr.K.Selvaraj

C O M M O N O R D E R

The petitioners have filed these petitions to call for the entire records in pursuant to the criminal proceedings in S.T.C.Nos.722, 720, 740, 724, 739, 721, 2687 and 2690 of 2017, respectively, on the file of the learned Judicial Magistrate No.III and IV, Salem.

2. Facts leading to the present round of litigation is that 1st accused is a Partnership Firm, Accused 2 and 3 are partners and they are doing wholesale silk saree business and participating in the day to day affairs of the business. The accused used to borrow money from the complainant very often and repaying it with interest at the rate of 18% per annum. While so, the accused borrowed a sum of Rs.49,00,000/- from the complainant on different occasions by way of various cheques and thereafter, the complainant insisted the accused to re-pay the principal amount, for which, the accused issued various cheques. However, the cheques were dishonored. Thereafter, the complainant issued a legal notice dated 09.09.2017, calling upon the accused to pay the value of the cheques. However they neither repaid the money nor sent any reply to the notice. Hence, the complainant has lodged a private complaint before the Trial Court. Challenging the same, the present petition is filed by the petitioner.

3. The learned counsel appearing for the petitioner / A3 submitted that apart from the above said facts, the petitioner is only a name lending partner of the accused Company and he is not the signatory of the accused Firm. All the business transactions are taken care of by the 2nd accused and the petitioner never involved in the financial affairs of the accused Company. Even then, the complainant has launched the present complaint only with an intention to extract money from the petitioner. Further, the petitioner\ herein being not involved in financial transaction of the Company, lodging complaint against him is not maintainable.



4. The learned counsel appearing for the petitioner further submitted that the 1st accused had moved an application before the Registrar of Firms, where the petitioner was shown as the outgoing partner and such an application was approved by the Registrar on 26.09.2017. Though the Registrar approved the same on 26.09.2017, the application shows the date of ceasing to be a partner as 08.06.2017, much before the date of the presentation of the cheques in question. Hence the respondent has no legally enforceable debt against the petitioner and prays for allowing of these petitions.

5. The learned counsel appearing for the respondent vehemently opposed the submissions made by the learned counsel for the petitioner and submitted that the petitioner being the partner of the Firm was also involved in the entire day to day administration of first accused Firm. Further there are lot of confusion with regard to the execution of the partnership deed in between th petitioner and other accused persons and both A2 and A3 signed cheques on various occasions. When it is the claim of the petitioner that 2nd accused is only administering the day to day financial activities, signing of cheques by A3 shows the ill motive of the petitioner in cheating the lenders. In the present case, the petitioner has borrowed huge amounts from the defacto complainant and in order to clear the debts, the accused have issued various cheques. Admittedly, the petitioner has filed application for dissolution of Firm on 26.09.2017, whereas the cheque was issued by the accused persons on 14.07.2017, well before the date of dissolution of Partnership Firm. Though it is claimed that the petitioner was relieved on 08.06.2017 itself and was not in the Firm at the relevant point of time and further in the paper publication effected on 01.08.2021, it was also informed through lawyer that the Partnership Firm got dissolved, subsequently thereafter, through the paper publication effected on 05.08.2017 in tamil daily, it was informed by the very same lawyer that they are continuing the Partnership Firm, as decided by the partners, which shows the contradictory stand taken by the petitioner in order which is nothing but an act to cheat the lenders and hence strongly opposed to quash the complaint against the petitioner.

6. This Court has considered the rival submissions and also perused the materials available on record.

7. Though several grounds have been raised by the learned counsel for the petitioner and the respondent, this Court is of the opinion that the dispute involved in the present case is a triable issue and the grounds raised by the counsel for the petitioner are all factual in nature and it requires appreciation of evidence and this Court cannot decide the same in exercise of its jurisdiction under Section 482 of Criminal



Procedure Code. It is left open to the petitioner to raise all the grounds before the Court and the same shall be considered on its own merits and in accordance with law. This Court is not inclined to interfere with the proceedings pending before the Court below. Hence this Court is not inclined to quash the complaints. However, his appearance 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.

8. For the reasons aforesaid, these Criminal Original Petitions are dismissed. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.III,
Salem.

2.The Judicial Magistrate No.IV,
Salem.

3.(do through) The Chief Judicial Magistrate,
Salem.

+8ccs to M/s.K.V.Law Firm, Advocates SR.Nos.53338, 53337,
53336, 53335, 53334, 53333, 53331 & 53566.

+8ccs to Mr.K.Selvaraj, Advocate SR.Nos.53348, 53351, 53349,
53352, 53355, 53354, 53350 & 53353

CrI.O.P.Nos.26090, 26094, 26098, 26099, 26100, 26102,
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GJ(CO)
RVM(07/12/2021)