



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 14.07.2021
DELIVERED ON : 17.08.2021
CORAM:

THE HONOURABLE MR.JUSTICE **G.ILANGO VAN**

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CrI.O.P.(MD)Nos.3373, 3374, 2577 & 2574 of 2021
CRL.M.P.(MD).Nos.4077, 4097, 1853, 1350, 4184,
4185, 1347, 1850 of 2021

Kevin ... Petitioner / Petitioner in
CRL.O.P.(MD).Nos.3373 & 3374 of 2021

T.Arunachalam ...Petitioner in CrI.O.P(MD).Nos.2577
& 2574 of 2021

Vs.

Newman ... Respondent / Complainant in all cases

PRAYER in CRL.O.P.Nos.3373 & 3374 of 2021: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records and set aside the order passed by the learned Judicial Magistrate No.II, Trichy in Cr.M.P.Nos.73 & 74 of 2021 dated 09.02.2021 in C.C.Nos.496 & 495 of 2018.

PRAYER in CRL.O.P.Nos.2574 & 2577 of 2021: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records relating to the proceedings in C.C.Nos.495 & 496 of 2017 on the file of the learned Judicial Magistrate No.II, Trichy and quash the same as against the petitioner.

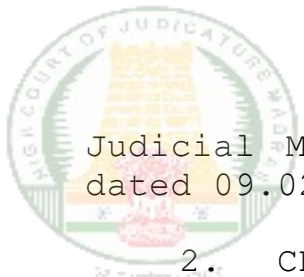
For petitioner : Mr.P.Saranath
in CrI.O.P(MD).Nos.
3373 & 3374 of 2021

For Petitioner : Mr.V.Illanchezian
in CrI.O.P(MD).Nos.
2577 & 2574 of 2021

For Respondent : Mr.D.S.Haroon Rasheed
in all petitions

C O M M O N O R D E R

CrI.O.P.(MD).Nos.3373 & 3374 of 2020 have been filed to call for the records and set aside the order passed by the learned



Judicial Magistrate No.II, Trichy in Cr.M.P.Nos.73 & 74 of 2021 dated 09.02.2021 in C.C.Nos.495 & 496 of 2018.

2. CRL.O.P.Nos.2574 & 2577 of 2021 have been filed to call for the records relating to the proceedings in C.C.Nos.495 & 496 of 2017 on the file of the learned Judicial Magistrate No.II, Trichy and quash the same as against the petitioner.

3. The facts in Crl.O.P.(MD).Nos.3373 and 3374 of 2021 are that the respondent has filed private complaints against the petitioner which were taken on file in C.C.Nos.495 and 496 of 2018 by the learned Judicial Magistrate No.II, Trichy. The offence involved in all these matters is Section 138 of Negotiable Instruments Act. During the course of trial proceedings, the respondent filed Crl.M.P.No.74 of 2021 in C.C.No.495 of 2018 and Crl.M.P.No.73 of 2021 in C.C.No.496 of 2018 under Section 311 Cr.P.C. seeking permission of this Court to exhibit some documents. By order dated 09.02.2021, the petitions were allowed by the trial Court. Challenging the same, these Criminal Original Petitions in Crl.O.P.(MD).Nos.3373 and 3374 of 2021 have been filed.

4. The facts in Crl.O.P.(MD).Nos.2574 and 2577 of 2021 are that the first accused is the Private Limited Company registered under the Companies Act, carrying on the business of granite stones. The second accused is the Director-cum-Chairman and the petitioner herein/third accused is the Managing Director. The respondent herein, the second accused and his wife are relatives. In the month of December 2012, the second accused namely Kevin and his wife namely Suganthi came to the complainant's house and stated that they have started and running a company in the name and style of "STALWART". They requested the respondent to invest in the company for which, the petitioner has also assured.

5. During the year 2013 and 2014, the complainant invested Rs.2,39,42,000/-. But, the accused did not fulfil the promise and obligation and did not return the money also. They evaded the repayment stating that there is a loss in the business. Later, the second accused gave two cheques dated 04.08.2016 for the amount of Rs.1,45,00,000/- and promised to honour the Cheque bearing No.000004 dated 04.08.2016 for a sum of Rs.70,00,000/-. It was presented for payment on 04.08.2016. But, it was returned stating that "Exceeds Arrangements". After completing the formalities, a complaint has been given by the complainant which was taken on file in C.C.No.497 of 2017.

6. Similarly, in Crl.O.P.(MD).No.2577 of 2021, the second



accused gave two cheques dated 12.07.2016 for the amount totally Rs.1,45,00,000/- and promised to honour the Cheque bearing No.000003 dated 12.07.2016 for a sum of Rs.75,00,000/- as part payment. It was presented for payment on the same day. But, it was returned stating that "Exceeds Arrangements". After completing the formalities, a complaint was given by the complainant which was taken on file in C.C.No.496 of 2017.

7. Seeking quashment of C.C.Nos.496 and 497 of 2017, the Criminal Original Petitions in Crl.O.P.(MD).Nos.2574 and 2577 of 2021 are filed mainly on the ground that the cheque was issued only by the second accused on behalf of the Company, in which, this petitioner, who is the third accused before the trial Court, has no more, because this petitioner resigned from the post of Director, from the Company on 23.06.2016 itself. Only thereafter, the disputed cheques were issued by the second accused. So, he is not liable for the disputed cheques.

8. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent in all these petitions.

9. Elaborate submissions have been made by the learned counsels on both sides. The accused persons executed a disputed cheque towards the discharge of liability. The cheques were presented for payment, but the same was dishonoured. Based upon which, both the cases have been filed, after completing the statutory formalities. In both the cases, the case of the accused is that the cheques were really missing and stolen by one Kumar and Newman, who were their ex-employees. By misusing those stolen cheques, these cases have been registered.

10. For the purpose of proving the source of the complainant, it appears that the petitions under Section 311 Cr.P.C have been filed by the complainant, the documents have also been produced in O.S.No.2322 of 2017 namely the Letter of Undertaking, Acknowledgement of Risk and Liability and Deed of Indemnity, Judgment and Decree of O.S.No.2322 of 2017. On the basis of the relevant documents, the trial Court has allowed the petition.

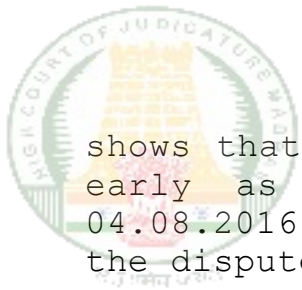
11. Even though elaborate arguments have been advanced on behalf of both sides with regard to factual aspects as well as the dispute, this Court is not going to touch upon that point, suffice to say that there is sufficient ground for allowing the petition filed under Section 311 by the respondent. The relevancy of those documents can be decided during the course of cross-examination as well as at the time of final disposal of the case. The parties should not be prevented from producing all the documents which are



all available with them, because they would say that they are relevant for the purpose of proving the liability. By no way or no means, the case of the petitioner will not be prejudiced by producing those documents. The judgments relied on by the petitioners in the written arguments though may be relevant, this Court is not convinced with the grievance that has been expressed by the petitioners by filing these petitions. As mentioned earlier, the relevancy of those documents can be decided at the time of cross-examination. The Courts cannot take into account the objections that has been raised by the petitioners, at the time of considering this petition. No doubt, there is a delay on the part of the respondent in filing the petition. But, on that ground, it is not proper in allowing these petitions by setting aside the order passed by the trial Court. The trial Court was conscious of the fact that the documents are relevant for the purpose of deciding the liability. When that being so, without any proper or reasonable ground, the impugned order cannot be set aside. Therefore, this Court does not find any merit in these petitions.

12. Now coming back to the quashment of C.C.Nos.496 and 497 of 2017, the sole ground on which the petitions in Crl.O.P.(MD). Nos.2577 & 2574 of 2021 have been filed is that the petitioner resigned from the post of Director on 23.06.2016. The cheque is dated 04.08.2016 which is much after the date of resignation of the petitioner. So, the question arises for consideration is whether this plea can be taken at this stage, because the case has been registered in the year 2017, five years lapsed. After a lapse of five years, the petitioner has approached this Court. The delay in filing the petition is not properly explained by the petitioner. So, this is the first defect which is available against the petitioner.

13. From the Minutes of the meeting conducted by the Company, it appears that a proposal was made to sell the company and this petitioner was authorized to make arrangements. Further, in the letter, it is seen that the sale process was concluded and the Board of Directors empowered Mr.Kelvin, Chairman either to retain or sell the company to any person. It is also seen that this petitioner should be relieved from the Company within a period of 90 to 120 days from the date of signing this letter or at the earliest possible time. For that purpose, he must execute all necessary documents. It is also stated that the petitioner is not responsible or liable for any Bank or Private Loan or any activities of the Company, after the Review Meeting dated 01.11.2014. In pursuance of the above said resolution, this petitioner submitted his resignation letter on 23.06.2016 that was accepted in the Board Meeting on 23.06.2016. Thereafter, Mr.Kelvin was authorized to carry on further course. Hence, this document



shows that he was relieved from the liabilities of the Company as early as on 23.06.2016 and the disputed cheques issued on 04.08.2016, he was no more a director. So, he is not liable for the disputed cheques.

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14. Even though these documents have been filed by the petitioner, they were not admitted by the respondent. It is a settled proposition of law that in case of quashment of the criminal cases, the admitted or sterling quality of documents are only taken into account. The documents relied upon by the petitioner are not admitted documents by the respondents. Therefore, those documents are required to be proved. On the basis of those documents, the criminal complaints against this petitioner cannot be quashed. Hence, he has to work out his remedy before the trial Court.

15. Another important feature is that the respondent filed recalled petition to recall himself for the purpose of making certain documents which was allowed by the trial Court and the same was challenged in the writ petition which was dismissed by this Court by a common order. Further, the respondent has stated that to show that till 19.09.2021, the petitioner was also one among the Directors, he has also produced a document. Similarly, a judgment in O.S.No.2322 of 2017 has also sought to be marked, wherein, this petitioner has also admitted the liability. So, in the light of the above developments, the petitioner has to work out his remedy as mentioned above during the trial process.

16. Hence, this Criminal Original Petitions stand dismissed with a direction to the Judicial Magistrate No.II, Trichy to expedite the trial and complete the same within a period of three months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (RECORDS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ssb

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

<https://hcservices.ecourts.gov.in/hcservices/>



To

1.The Judicial Magistrate No.II, Trichy

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

The Registrar(Judicial),
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD) Nos.3373, 3374, 2577 & 2574 of 2021
17.08.2021

SRK(CO)
SB(27.09.2021) 6P 4C