



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **13.08.2021**

CORAM:

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

Crl.O.P.(MD)No.10298 of 2020

CRL.M.P(MD) .No.4759 of 2020

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1.Sakkariyas

2.Robert Rajkumar

3.Shanthi Josephine

... Petitioners/Accused No.3 to 5

Vs.

Kalaiselvan

... Respondent/Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records relating to the private complaint in C.C.No.14 of 2020 on the file of the Judicial Magistrate, Rajapalayam and quash the same as illegal, insofar as the petitioners are concerned.

For Petitioners : Mr.R.Gandhi

For Respondent : Mr.V.Thirumal

O R D E R

This petition has been filed to call for the records relating to the private complaint in C.C.No.14 of 2020 on the file of the Judicial Magistrate, Rajapalayam and quash the same as illegal.

2. The case of the prosecution is that the second accused namely Christopher borrowed a sum of Rs.12,00,000/- as a hand loan to develop his business and agreed to pay interest at the rate of 12% per annum. But, the amount was not repaid. The second accused is the Proprietor of S.J.Films International and it is a sister concern of A1. They issued a cheque bearing No.358946 dated 27.05.2011 for the above said amount which was drawn at Axis Bank, Chennai. Thereafter, the same was presented for payment through his bank on 28.05.2011 and it was returned as "Account closed". Hence, a statutory notice was issued on 11.06.2011 and the same was returned as no such addressee as far as the first accused is concerned and in respect of the accused Nos.2, 3, 4 and 7, the notice was returned as left without instruction. Notice to the fifth accused was returned as unclaimed.



3. Based upon the complaint given by the respondent, a case in S.T.C.No.141 of 2011 has been taken on file by the learned Judicial Magistrate, Srivilliputtur. Now, it has been transferred and re-numbered as C.C.No.14 of 2020 on the file of the Judicial Magistrate, Rajapalayam.

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4. Seeking quashment of the private complaint, this petition is filed mainly on the ground that the petitioners are not the Directors of the S.J. Films International Private Limited. The loan was borrowed by the second accused in his personal capacity. He only issued a disputed cheque in the capacity of S.J.Films International Private Limited. When the cheque has been drawn by the Proprietor/second accused herein of the above said company, arraying the petitioners as accused stating that they are the Directors of the Company is not valid under law.

5. Earlier, the petitioners have filed Crl.O.P(MD).Nos.15023 & 15294 of 2011 which were disposed of on 22.11.2017. Without adjudicating the merits of the case, a direction has been issued to the trial Court to complete the trial within a period of six months. Even thereafter, there is no progress.

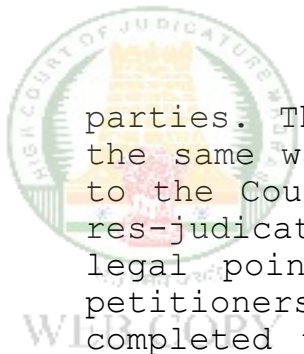
6. The respondent has filed a counter affidavit, in which, it is stated that the petitions for dispensing with the personal appearance of Shanthi Josephine and Sakkariyas alone were allowed.

7. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent.

8. The learned counsel appearing for the respondent would submit that when the petitioners moved similar petitions before this Court in Crl.O.P(MD).Nos.15023 and 15294 of 2011, they were disposed of with a direction to the concerned Magistrate to dispose of the matter within a period of six months and the personal appearance of the petitioners also was dispensed with. Hence, when the earlier order has been passed in such a manner, seeking the very same relief by way of this petition is not at all maintainable.

9. To this specific objection, the learned counsel appearing for the petitioners would submit that those petitions were not disposed of on merits. But, only on the basis of the representation made by the learned counsel for the petitioners, the same was disposed of by dispensing the personal appearance of the petitioners before the trial Court with a direction to complete the trial within a period of six months. Therefore, the question of *res-judicata* may not arise. Hence, the disposal of the earlier petitions should not be taken as *res-judicata*.

10. However, this Court is not convinced with the arguments advanced by the learned counsel appearing for the petitioners. This Court cannot pass orders depending upon the mind swing of the



parties. They sought a particular relief at one point of time and the same was disposed of, based on their request. Later, they come to the Court with the same prayer stating that it is not a bar of res-judicata. Even though the petitioners may be correct on the legal point involved in this matter, the reasons stated by the petitioners cannot be canvassed in this matter. If the trial is not completed within the time stipulated by this Court, not only the petitioners but also the respondent are at liberty to work out their remedy appropriately. But, the same has not been done. More than, four years lapsed from the date of the above said disposal. It appears that the matter has not been concluded so far. But, that cannot be a ground for considering this petition.

11. However, from the typed set of papers, it is seen that the concerned Judicial Magistrate has sent a letter requesting this Court to grant six months time to dispose the matter. It was heard on 20.06.2019 and four months time was granted. It is also observed that a non-bailable warrant has been issued against the second and seventh accused. So, it appears that due to non-cooperation of the petitioners, the trial could not be completed. Hence, the petitioners are duty bound to co-operate with the trial Court for completing the trial process. Further, such sort of request at piecemeal cannot be entertained by this Court. It is not the case of the petitioners that the earlier application was moved on different set of facts and different set of legal issue. The facts are the same and the legal issues involved in both the matters are also same. Having restricted their request and relief only with regard to dispensing the personal appearance of the petitioners, it may not be fair on the part of the petitioners once again to approach this Court seeking order on merits. Hence, this Court is not convinced with the request that has been made by the petitioners. They have to face the trial process.

12. Accordingly, this Criminal Original Petition stands dismissed. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

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/ /2022

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

The Judicial Magistrate, Rajapalayam.

+1 CC to M/s.V.THIRUMAL, Advocate (SR-26556[F] dated 17/08/2021)

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CrI.O.P. (MD) No.10298 of 2020

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RK (27/01/2022) 4P 3C