



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P (MD) No.18459 of 2021

and

Crl.M.P. (MD) No.10176 of 2021

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Menaka

... Petitioner/Accused No.2

Vs

J.Savarimuthu

... Respondent/Complainant

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to call for the records in STC No.393 of 2021 pending on the file of the Judicial Magistrate No.1, Ramanathapuram and quash the same.

For Petitioner : Mr.S.Prabakaran
Senior Counsel for
Mr.Karthikeyan Sekar

ORDER

Heard the learned senior counsel for the petitioner.

2.This Criminal Original Petition has been filed for quashing the proceedings in S.T.C.No.393 of 2021 on the file of the Judicial Magistrate No.1, Ramanathapuram.

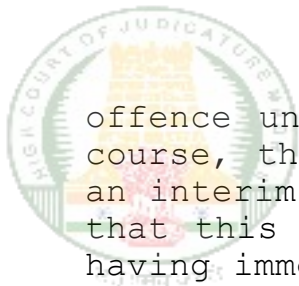
3.The respondent herein instituted the said private complaint under Section 138 of the Negotiable Instruments Act. The specific case of the complainant is that Bullion Fintech LLP represented by its designated partners namely Neethimani and Menaka had issued the complaint cheque bearing No.761701 for a sum of Rs.1,25,00,000/- drawn on Indusind Bank, Nungambakkam Branch, Chennai, favouring the complainant. The complainant had presented the said cheque for collection on 20.07.2021 through Canara Bank, Ramanathapuram Branch. It was returned with an endorsement 'Refer to Drawer'. Thereupon, the complainant issued statutory notice dated 04.08.2021. A reply was given on 16.08.2021. Since the drawer of the cheque did not comply with the demand set out in the statutory notice, after complying with all the usual formalities, the impugned complaint came to be filed on 06.09.2021. The court below had taken cognizance of the offence under Section 138 of the Negotiable Instruments Act r/w Section 142 of Negotiable Instruments Act r/w Section 200 of Cr.P.C and issued summons to the accused. The petitioner is figuring as second accused in the said complaint. To quash the impugned complaint, this criminal original petition came to be filed.



4.The learned Senior Counsel reiterated all the contentions set out in the memorandum of grounds. In particular, he pointed out that an almost identically worded complaint was put to challenge in Crl.O.P.(MD)No.16144 of 2021. A learned Judge of this Court vide order dated 25.10.2021 had granted interim stay. The copy of the interim order had been enclosed at Page No.18 of the typed set of papers. He would further contend that against the Bullion Fintech LLP, criminal cases have been registered on the file of the Bazaar Police Station, Ramanathapuram and also E.O.W Madurai. According to him, the complainant herein is one of the complainants in those cases also. The learned senior counsel would contend that on the same set of facts, two independent prosecutions cannot parallelly lie. In the affidavit filed in support of this petition, the petitioner had set out the list of properties. The learned senior counsel strongly urged that the accused have no intention to cheat the depositors and that this Court can pass appropriate directions for securing the properties belonging to the Firm so that the claims of the depositors could be settled in due course. According to him, the very filing of a complaint is an abuse of process. He called upon this court to quash the impugned complaint in the interest of justice.

5.I am not persuaded by any of the contentions advanced by the learned senior counsel for the petitioner. The scope of the present petition is whether the institution of the complaint under Section 138 of the Negotiable Instruments Act by the respondent herein deserves to be quashed or not. I carefully went through the averments in the impugned complaint. *Prima facie*, the ingredients of the offences have been set out in the complaint. I would be justified in quashing the said complaint only if taking the complaint averments at their face value no offence is made out. I cannot say so. The cheque in question was drawn from an account maintained by Bullion Fintech LLP. The petitioner herein is one of the designated partners of the said Firm. In the complaint, it has been specifically averred that the petitioner along with Neethimani has been running the said company. It has been further alleged in the complaint that the complaint cheque was issued towards discharge of liability.

6.Of-course, the learned senior counsel would raise the contention that the version projected in the complaint is inherently improbable. On account of the criminal cases registered against the petitioner's husband, he was arrested and it is simply improbable that the cheque could have been handed over as suggested in the complaint. It is a pure question of fact and it will have to be established only during a regular trial. It is true that the petitioner and her husband are facing police cases registered on the file of the E.O.W, Madurai. But this is not a case in which Section 210 of Cr.P.C can be invoked. The police cases have been registered for IPC offences. The case on hand pertains to an



offence under Section 138 of the Negotiable Instruments Act. Of course, the contention that in more or less similar circumstances, an interim order has been granted in Crl.O.P(MD)No.8477 of 2021 and that this case could be taken up along with the said petition is having immense persuasive value.

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7. But then, on going through the interim order, I find that no specific reason has been set out. It is too well settled that an interim order is not having any binding effect as such. Therefore, leaving open the petitioner's contentions, this Criminal Original Petition is dismissed. Since the petitioner is a woman, her personal appearance before the Court below is dispensed with. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CRL)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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.

To

The Judicial Magistrate No.1,
Ramanathapuram.

+1 CC to M/s.J.SATHIYARAJ, Advocate (SR-36422[F] dated
29/11/2021)

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RS (09.12.2021) 3P 3C