



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2022

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

CRL.O.P.NO.27580 OF 2016

AND

CRL.M.P.NOS.14077 & 14078 OF 2016

1.Selvakumar

2.Sumathi

.. Petitioners/Accused

Vs.

Sekar

.. Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records and to quash the proceedings initiated against the petitioners in S.T.C.No.158 of 2016 on the file of learned Fast Track Judge Magisterial level, Tiruchengode.

For Petitioners : Mr.K.S.Kaviarasu

For Respondent : Mr.I.C.Vasudevan

O R D E R

This petition is filed to call for the records and quash the proceedings initiated against the petitioners in STC.No.158/2016 on the file of Fast Track Judge Magisterial level, Tiruchengode. STC No.158/2016 had been taken cognizance on the basis of the complaint given under Section 138 of Negotiable Instruments Act.

2. A reading of the complaint shows that the respondent as a complainant alleged that petitioners borrowed a sum of Rs.5 lakhs from him on 05.05.2015 as a hand loan for their business purpose and issued a post dated cheque dated 05.06.2015 to discharge the loan liability. The cheque drawn on Andra Bank, Pallipalayam Branch, bearing Cheque No.368486 was presented for collection on 05.06.2015 through Lakshmi Vilas Bank,



Pallipalayam Branch. The cheque was returned on 08.06.2015 for the reason "Funds insufficient". Statutory notice dated 02.07.2015 was sent to petitioners demanding the payment within 15 days from the date of receipt of the notice. Petitioners received the notice on 03.07.2015 but neither paid the amount nor sent any reply. Therefore the complaint.

3. Against the said complaint, this quash petition is filed.

4. It is submitted by the learned counsel for the petitioners and it is seen from the grounds filed in this petition that respondent is a total stranger to the petitioners. Petitioners had filed a suit in O.S.No.136/2015 before the District Munsif, Kangeyam against the respondent and 9 others, the money lenders, and that suit is pending. It is contended in the plaint that the cheque No.368486 was obtained forcibly by one Subramani. This complaint was filed at the instigation of Subramani. There is no transaction as alleged in the complaint between the petitioners and respondent. Therefore, this petition is not maintainable and liable to be quashed. In support of this submission, the learned counsel for the petitioners submitted that the copy of the plaint in O.S.No.136/2015.

5. In response, the learned counsel for the respondent submitted that the suit in O.S.No.136/2015 was dismissed for default on 17.07.2020. Respondent has produced the cheque which was returned dishonoured. The cheque was issued for discharging the legally enforceable debt and liability and it was dishonoured for the reason that there was no sufficient funds in the account of the petitioners. Thus, the case has to be tried for it to reach its logical conclusion.

6. Considered the rival submissions and perused the records.

7. It is seen from the grounds raised and the submissions of the learned counsel for the petitioners that the only ground on which the quash petition was filed is that the suit in O.S.No.136/2015 was filed for the relief permanent injunction from compelling the plaintiff to pay an exorbitant interest etc and to grant mandatory injunction directing the defendants to return the cheques, promissory notes, blank green sheets, NJS papers belong to plaintiffs. Now, it is submitted by the learned counsel for the respondent that the suit was dismissed for default. Therefore, this Court finds no reason to entertain this criminal original petition.



8. That apart, it is seen from the complaint allegations that petitioners borrowed a sum of Rs.5 lakhs and only towards the discharging the loan liability, the impugned cheque was issued. When the cheque was presented for collection, it was returned for the reason "Insufficient Funds". Thus, this Court is of the considered view that prima-facie case was made out for taking the case on file for the offence under Section 138 of Negotiable Instruments Act and to proceed with the trial. Therefore, this Court finds no merits in this petition. Accordingly, this petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

9. It is submitted by the learned counsel for the respondent that the case is now transferred to learned Judicial Magistrate, Kumarapalayam and taken cognizance in STC.No.35 of 2020. Therefore, the learned Judicial Magistrate, Kumarapalayam is directed to dispose the case as expeditiously as possible.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

AT

To

1. The Fast Track Judge Magisterial level,
Tiruchengode.
2. The Judicial Magistrate,
Kumarapalayam.
3. -do- through The Chief Judicial Magistrate,
Namakkal.

Cr1.O.P.No.27580 of 2016

JP(CO)

RLP(11/04/2022)