



WEB COPY



Crl.O.P.Nos.11843 and11848 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2022

CORAM

THE HON'BLE Dr.JUSTICE G.JAYACHANDRAN

Crl.O.P.Nos.11843 and11848 of 2019
and Crl MP No.6128 of 2019

Mr.O.Venkatachalapathy

... Petitioner/Accused No.3
in both Crl OPs

-Vs.-

1.Mallika

...Respondent /Complainant

2. N.Soundappan

...Respondent / Complainant

Prayer in Crl OP No.11843 of 2019 :- Criminal Original Petition filed under Section 482 of Code of Criminal Procedure to call for the complaint and entire records in STC No.1074 of 2018 on the file of the learned Judicial Magistrate No.III, Salem.

Prayer in Crl OP No.11843 of 2019 :- Criminal Original Petition filed under Section 482 of Code of Criminal Procedure to call for the complaint dated 22.01.2018 and entire records in STC No.1073 of 2018 on the file of the learned Judicial Magistrate No.III, Salem.

For Petitioner : Mr.J.Hariharan



Crl.O.P.Nos.11843 and 11848 of 2019

for M/s.KV Law Firm
in both Criminal OPs

For Respondent : Mr.C.K.M.Appaji
in both Crl Ops

ORDER

These petitions are filed to quash a private complaint initiated under Section 138 of the Negotiable Instrument Act. The subject matter of the complaint is three cheques dated 01.11.2017 for Rs.3,00,000/-, 4,00,000/- and 3,00,000/- each. The said cheques issued in favour of the complainant Soundappan in the course of business transaction. The drawer of the cheque is the partner of M/s.G.V.Silks signed by one Gnanasekaran. This petitioner is arrayed as 3rd accused being one of the partner of G.V.Silks.

2. The learned counsel for the petitioner contending that he ceased to be the partner as on 08.06.2017 and the same has been informed to the Registrar vide an application dated 26.09.2017 and also contended that he has not involved in the day to day affairs of the Partnership firm and not the authorised signatory of the cheques on behalf of the partnership firm.



Crl.O.P.Nos.11843 and 11848 of 2019

WEB COPY

3. The learned counsel for the respondent submitted that however just to avoid the prosecution, the present quash petition has been filed.

4. Though in the petition, it is contended that he has moved an application to get the copy of the relieving from the partnership firm. In spite of affording an opportunity, the same has not produced even after three years of filing of this quash petition. Whereas, in the complaint it is specifically stated that the accused 2 and 3 are partners of the First accused firm and in the course of the business transaction, the cheque was issued and on presentation, the same was returned with an endorsement “funds insufficient”. Thereafter the statutory notice was issued on 27.11.2017 and the same was received by this petitioner. But no reply was sent denying the liability or assurance to pay the cheque amount signed by the petitioner.

5. When the matter was came up for consideration on



Crl.O.P.Nos.11843 and 11848 of 2019

WEB COPY

26.09.2021 to ascertain whether the petitioner was not the partner of the firm on 01.11.2017 requested the counsel to produce the relevant documents which the petitioner as stated in Paragraph 6 of the quash petition. For production of the said resolution of the partnership firm, the matter was adjourned today. When the matter came up today, the learned counsel for the petitioner seeks for further time to file the resolution certificate.

6. This Court is of the view that the petitioner herein having failed to answer the notice caused to him on 21.11.2017, had come before this Court with a positive assertion that he is not a partner of the 1st accused Firm and also candidly gives an impression that he has applied for the certificate before the Registrar of Firms. Though, the petition was filed on 24.04.2019 with the said assurance, till date, he is not able to produce the certificate of resolution of partnership, this Court is not inclined to keep the matter pending any further.

7. Having been accused of being a partner of the 1st accused firm and actively participated in the affairs of the firm, private complaint



Crl.O.P.Nos.11843 and 11848 of 2019

WEB COPY

has been lodged. It is open to the petitioner herein to produce the documents to show that he was not the partner on the date of the cheque or not actively participated in the affairs of the firm in the course of the trial.

8. Accordingly, stay vacated and the Criminal original petitions are dismissed. The Trial Court is directed to complete the trial within a period three months from the date of receipt of the notice. Consequently, the connected miscellaneous petition is closed.

26.09.2022

Speaking/Non-speaking order

Index: Yes/No

Internet : Yes/No

rka

To

1.The Judicial Magistrate No.III, Salem.

2.The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.O.P.Nos.11843 and11848 of 2019

Dr.G.JAYACHANDRAN.J.,

rka

Crl.O.P.Nos.11843 and11848 of 2019
and Crl MP No.6128 of 2019

26.09.2022