



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2022

CORAM

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

Crl.O.P.No.20996 of 2021

and

Crl.M.P.No.11400 of 2021

Tmt. Amirthammal

... Petitioner

Vs

1. Seshagiri Rao (died)
rep. by his son M.V.S.Deepak,
Hansa Court Yard, Tiruvottiyur,
Chennai 600 017
2. The Inspector of Police,
H-8, Tiruvottriyur Police station,
Chennai.
3. The Inspector of Police,
Anti Corruption Cell, CBI,
Shastri Bhavan, Chennai.

...Respondents

Criminal Original petition is filed under Section 482 of Criminal Procedure Code to set aside the returned docket order dated 22.10.2021 in Crl.M.P.SR.No.5890 of 2021 in STC No.284 of 2013 filed by the petitioner under Section 210 of Cr.P.C. and issue suitable direction to the Judicial Magistrate, Tiruvottriyur to take the said petition filed under Section 210 of Cr.P.C in Crl.M.P.SR.No.5890 of 2021 in STC No.284 of 2013 on file and dispose the same on merits.

For petitioner ... Mr. V. Parthiban

For respondents ... Mr. A. Thirumaran,
for R1
... Mr. C.E.Pratap,
Government Advocate,
for R2
... Mr. K. Srinivasan,
Special Public Prosecutor,
for R3



ORDER

This Criminal Original Petition has been filed against the order passed by the learned Judicial Magistrate, Tiruvottrur in the petition filed by the petitioner under Section 210 of Cr.P.C, as not maintainable.

2. The learned counsel for the petitioner submitted that the first respondent herein has initiated a private complaint against the petitioner under Section 138 of Negotiable Instruments Act on the ground that the petitioner has issued a cheque to the tune of Rs.6 lakhs to the first respondent in order to discharge the legal liability. When the same was presented for collection, it was dishonoured on the ground of insufficient fund, thereafter, the private complaint has been filed, which was taken cognizance and pending on the file of the the Judicial Magistrate, Tiruvottiyur in STC No.284 of 2013. In the meantime, CBI has registered a case against the petitioner and others for the offences under Sections 406, 420, 463, 464, 467, 468, 471 and 477 IPC, and after filing the final report, the matter was taken cognizance as C.C.No.14 of 2015 on the file of the XII CBI, Chennai and the same is pending. Alleging that, after registering the above criminal case, the police has forcibly obtained cheques from the petitioner and handed over the same to the first respondent and using the same, the private complaint under Section 138 of Negotiable Instruments Act has been filed.

3. In the above circumstances, since the issue involved in both the cases are one and the same, to stay the proceedings in STC No.284 of 2013 till the disposal of the case in CC No.14 of 2015, the petitioner filed an application under Section 210 Cr.P.C. The learned Judicial Magistrate, Tiruvottiyur, returned the petition as not maintainable stating that another application filed by the petitioner under Section 210 Cr.P.C has already been dismissed on 25.11.2019, the second petition is not maintainable.

4. The learned counsel for the petitioner submitted that the petition was rejected only on the ground that proper parties namely, CBI was not impleaded as party respondent. Thereafter, they filed the present petition impleading the proper parties. But the learned Judicial Magistrate, without considering those facts, dismissed the same.



5. I have heard both sides and perused the materials available on records carefully.

6. From a perusal of the records, it could be seen that the criminal case filed by the CBI against the petitioner is for misappropriation and other offences. So far as the complaint filed under Section 138 of Negotiable Instruments Act is concerned, it is only a dispute between the petitioner and the first respondent. Admittedly, the offences in both the cases are not the same, and it is distinct.

7. In the above circumstances, the petitioner cannot invoke Section 210 of Cr.P.C. to stay the proceedings. If at all the petitioner has got defence that the cheque has been forcibly obtained by the first respondent, through police, it is always open to him to raise all those defence before the Trial Court, where the complaint is pending under Section 138 of Negotiable Instruments Act. On that score, the petitioner cannot seek stay the proceedings. This Court finds no merit in this petition and hence, the same is liable to be dismissed.

8. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

mrp

To

1. The Judicial Magistrate,
Tiruvottriur
2. The Inspector of Police,
H-8, Tiruvottriyur Police station,
Chennai.
3. The Inspector of Police,
Anti Corruption Cell, CBI,
Shastri Bhavan, Chennai.



4.The Public Prosecutor,
High Court, Madras.

WEB COPY

+1cc to Mr.A.Thirumaran, Advocate Sr.1792
+1cc to Mr.V.Paarthiban, Advocate Sr.1886

Crl.O.P.No.20996 of 2021

mt[co]
srg 25/02/2022