



Crl.O.P.Nos.23882 and 23444 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2022

CORAM

THE HON'BLE Dr.JUSTICE G.JAYACHANDRAN

Crl.O.P.Nos.23882 & 23444 of 2019

and

Crl.M.P.Nos.12317 & 12625 of 2019

Nagavalli

... Petitioner in both Crl.O.Ps

-Vs.-

1.Parveen Bheevi,
Represented by Power Agent,
Mr.Bhasheer Ahammed,
No.69, Bajanai Math Lane,
Nethaji Road, Tiruvarur and District.

2.J.Shaithan Singh

.. Respondents in Crl.O.P.No.23882 of 2019

[***The second respondent is
impleaded as per the order dated
22.11.2022 in Crl.M.P.No.17923 of
2019 in Crl.O.P.No.23882 of 2019]



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1.The State rep by its
The Inspector of Police,
Town Police Station,
Tiruvarur District.

2.J.Shaithan Singh

.. Respondents in Crl.O.P.No.23444 of 2019

Prayer in Crl.O.P.No.23882 of 2019:

Criminal Original Petitions filed under Section 482 of Code of Criminal Procedure to call for the records to quash the same in S.T.C.No.510 of 2019 on the file of the learned Judicial Magistrate (Fast Track), Tiruvarur.

Prayer in Crl.O.P.No.23444 of 2019:

Criminal Original Petitions filed under Section 482 of Code of Criminal Procedure to call for the records and quash the FIR No.227 of 2019 on the file of the Town Police Station, Tiruvarur in respect of the petitioner alone.

For Petitioner
in both Crl.OPs :Mr.P.Vijendran

For Respondents in
Crl.O.P.No.23882 of 2019 :Mr.Govindaraja, for R1
Mr.R.Selvakumar, Intervenor for R2



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For Respondents in
Crl.O.P.No.23444 of 2019 Mr.N.S.Suganthan,
Government Advocate (Criminal side)
for R1
Mr.R.Selvakumar, for R2

COMMON ORDER

These Criminal Original Petitions have been filed under Section 482 Cr.P.C, to quash the criminal complaint initiated under Section 138 of the Negotiable Instruments Act [hereinafter “NI Act”].

2. The sum and substance of the private complaint filed by the respondent is that the property in Tiruvarur, Vijayapuram, Ellaiamman Veethi, Ward No.3, Block No.20, Town Survey No.777-1, Door No.14C, belongs to her. She entered into a sale agreement with the petitioner herein through her Power Agent for a sale consideration of Rs.23,00,000/-. As an advance, Rs.8,00,000/- cash was paid to her. For the balance sale consideration, a cheque bearing Cheque No.035382



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dated 28.12.2018, for a sum of Rs.15,00,000/- was handed over to her. Based on the promise that the cheque will be honoured, the sale deed dated 31.12.2018 was duly executed by her. While so, when the cheque was presented for collection, it was returned with an endorsement “Signature Varies”. The cheque was again represented on 22.03.2019 and this time, the cheque was returned with an endorsement “Funds Insufficient”. In the said circumstances, a Statutory notice dated 05.04.2019 was sent through the counsel and that was returned unserved with an intimation “Unclaimed”. Hence the complaint.

3. This complaint is challenged and sought to be quashed in Crl.O.P.No.23882 of 2019 on the ground that the property admittedly purchased for consideration of Rs.23,00,000/- and Rs.8,00,000/- was given in cash. For the balance Rs.15,00,000/-, though the cheque was given, it was with the understanding that it has to be paid to the tenant/Shaitan Singh, who is carrying on garment business in the ground floor of the premises and had given an advance of Rs.13,00,000/- to the owner/Parveen Bheevi. The tenant was informed about the transfer of



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property in favour of the petitioner. While so, the tenant/Shaitan Singh, filed a criminal complaint before the Inspector of Police, Town Police Station, Tiruvarur on 26.06.2019 alleging that the petitioner and the first respondent in Crl.O.P.No.23882 of 2019 had forcibly and illegally thrown him out from the premises and also the garments kept in the premises were removed and damaged and the said complaint was registered in FIR No.227 of 2019, which is sought to be quashed in Crl.O.P.No.23444 of 2019.

4. In the said circumstances, the petitioner was forced to approach this Court for anticipatory bail and by order dated 08.07.2019 made in Crl.O.P.No.17673 of 2019, the anticipatory bail was granted, in the criminal complaint registered in Crime No. 227 of 2019, with conditions. In the said anticipatory bail petition, this Court directed the petitioner herein to deposit a sum of Rs.15,00,000/- in the Crime Account. Accordingly, she has deposited Rs.15,00,000/-. Hence, it is submitted by the learned counsel for the petitioner that since the complaint lodged by Shaitan Singh, which has been taken up for investigation in



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Crime.No.227 of 2019, is related to the part of sale consideration that has to be paid to the *de facto* complainant and as a *bona fide* purchaser, now the petitioner has deposited the money in the Crime Account, the criminal complaint under Section 138 of NI Act is not sustainable and hence it has to be quashed.

5. Mr.R.Selvakumar, learned counsel representing the complainant/Shaitan Singh intervening in this matter since there has been some development in implementing the conditional order passed by this Court while granting anticipatory bail to the petitioner in Crime No.227 of 2019 initiated by Shaitan Singh. From the records and submissions made by the counsels, it appears that for securing the anticipatory bail in Crime No.227 of 2019 the petitioner herein has complied with the conditional order imposed by this Court by depositing Rs.15,00,000/- in the account of Crime No.227 of 2019. Thereafter, sought for modification that this amount shall be transferred to the account of S.T.C.No.510 of 2019, where she is facing criminal prosecution for the offences under Section 138 of NI Act. On considering the representation,



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this Court has ordered to transfer the amount deposited.

6. However, on intervention of Shaitan Singh, considering that the said amount was deposited as a precondition to secure bail in complaint of forceful eviction and cheating of the advance money cannot be kept in deposit in the case where the petitioner facing prosecution for offences under Section 138 of NI Act filed by the owner of the property. In other words, the amount to be paid to the tenant of the premises cannot be deposited in the cheque case filed by the owner of the premises. Therefore, this Court on realising that conditional order of depositing Rs.15,00,000/- is in respect of Crime No.227 of 2019 initiated by the tenant, reviewed the earlier order and directed the petitioner to redeposit the money in the account of Crime No.227 of 2019. Accordingly, as on date, Rs.15,00,000/- deposited by the petitioner herein, stands in the account of the Crime No.227 of 2019.

7. In the said circumstances, the learned counsel appearing for the first respondent in Crl.O.P.No.23882 of 2019, who is the *de facto*



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complainant/erstwhile owner of the premises, has circulated the tenant agreement between the petitioner and the Shaithan Singh/complainant in Crime No.227 of 2019, who was the tenant in the said premises. The said agreement is dated 17.01.2019 i.e., after the registration of the property in the name of the petitioner herein on 31.12.2018. Reading of this rental agreement, it appears that the petitioner herein has received Rs.10,00,000/- as advance from Shaitan Singh and let out the premises to Shaitan Singh for a period of 5 years for a rent of Rs.15,000/- per month.

8. In this quash petition, it is stated that since Rs.15,00,000/- has already been deposited in the crime account, there is no legally enforceable debt payable to the complainant who is the erstwhile owner of the premises.

9. The subject cheque dated 28.12.2018 was issued for balance sale consideration of the property, which the petitioner has purchased. Now the property stands in the name of the petitioner. She has also entered into the rental agreement with Shaitan Singh on 17.01.2019 and



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had received advance of Rs.10,00,000/-. While so, the dishonour of the cheque on presentation on two occasions, i.e., on 28.12.2018 and on 22.03.2019, has occurred prior to the complaint of Shaitan Singh dated 26.06.2019. Therefore, if any amount deposited in the account of the Crime No.227 of 2019, which is registered at the instance of Shaitan Singh, have no bearing or relevance to the private complaint, which is initiated under Section 138 of the NI Act for dishonouring of the cheque dated 28.12.2018.

10. This Court finds that the reason stated to quash the criminal complaint is unfound, imaginary and based on the subsequent events for which the petitioner has to face investigation of the complaint in Crime No.227 of 2019.

11. The learned Government Advocate (Criminal side) further submits that in Crime No.227 of 2019, on completion of investigation, the final report has been filed and cognizance has been taken by the learned Judicial Magistrate No.II, Tiruvarur in C.C.No.45 of 2021.



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12. Recording the same, these Criminal Original Petitions are dismissed as devoid of merits. Consequently, the connected miscellaneous petitions are also closed.

22.11.2022
(1/2)

Speaking/Non-speaking order
Index: Yes/No
Internet : Yes/No
nsa

To

- 1.The Judicial Magistrate (Fast Track),
Tiruvarur.
- 2.The Inspector of Police,
Town Police Station,
Tiruvarur District.
- 3.The Public Prosecutor,
High Court, Madras.



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Dr.G.JAYACHANDRAN.J.,

nsa

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