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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2021

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CrI.O.P.No.30324 of 2019
and
CrI.M.P.No.16392 of 2019

1. M/s.Sri Elumalai Sons,
Rep by its Authorised Signatory E.Sankar,
No.72, Sivan Pada Street, Main Bazaar,
Tiruvannamalai - 606 601.
2. M/s.Sri Elumalai Sons,
Rep by its Partner E.Sankar,
No.72, Sivan Pada Street, Main Bazaar,
Tiruvannamalai - 606 601.
3. M/s.Sri Elumalai Sons,
Rep by its Partner E.Ravi,
No.72, Sivan Pada Street, Main Bazaar,
Tiruvannamalai - 606 601.
4. M/s.Sri Elumalai Sons,
Rep by its Partner E.Nataraj,
No.72, Sivan Pada Street, Main Bazaar,
Tiruvannamalai - 606 601.
5. M/s.Sri Elumalai Sons,
Rep by its Partner E.Selvam,
No.72, Sivan Pada Street, Main Bazaar,
Tiruvannamalai - 606 601.

...Petitioners/Accused

Vs.

M/s.Kumar Imports and Exports,
Represented by its Partner, Mr.M.Kumar,
Having its office at No.70, Acharappan Street,
1st Floor, Chennai - 600 001.

...Respondent

PRAYER : Criminal Original Petition is filed under Section 482 of CrI.P.C., praying to call for the records in C.C.No.908 of 2019 on the file of the Fast Track No.IV (Metropolitan Magistrate), George Town, Chennai and quash the complaint under Section 138 of N.I.Act, pending against the petitioners.



For Petitioners : M/s.G.Sampath

For Respondent : M/s.M.Sankar

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ORDER

This Criminal Original Petition has been filed seeking to call for the records in C.C.No.908 of 2019 on the file of the Fast Track No.IV (Metropolitan Magistrate), George Town, Chennai and quash the complaint under Section 138 of N.I.Act, pending against the petitioners.

2. The learned counsel for the petitioners submits that the cheque in question was signed by the second petitioner on behalf of first petitioner and the petitioners 3 to 5 have been unnecessarily implicated in this case. In the complaint, there was no mention about the role of petitioners 3 to 5. He further submits that the case of the respondent/complainant is that the respondent is carrying on business under the name and style of M/s.Kumar Imports and Exports, dealing with pulses, gram Dhal and Dhal items. The further case is that petitioners are regular customer and the petitioners have been given credit facility by the complainant taking into account the transaction made by the petitioners with the complainant. The further case is that during the course of the business transaction the petitioners had approached the respondent for the purchase of pulses, gram and dhal and dhal items from the respondent and they had business dealing for about many years. While so, they purchased materials totally Rs.40,17,675/- and they paid Rs.23,96,560/- and for balance they issued cheques on 11.02.2019, when it is presented for encashment, all were returned as account closed. Hence, notice was issued to all the petitioners, the learned counsel for the petitioners would submit that the overt act against the petitioners 3, 4 and 5 has not been mentioned in the complaint and that they were not having any knowledge about the alleged business transaction.

3.The learned counsel for the petitioner submits that they filed this application to quash the proceedings on the ground that all the petitioners were not participated in the alleged transaction, the second petitioner alone had signed the cheque and the same was issued in the capacity of partner. Apart from that no invoices contain the signature of the petitioners and the bills were purported to be of the year 2017, whereas no explanation was given either in respondents legal notice or in the complaint by the respondents as to why he had waited till date.

4.Learned counsel for the respondent submits that the



respondent, on the instruction from the petitioners, had deposited the cheque for encashment on 11.02.2019 with the respondent bank, Tamil Nadu Mercantile Bank, George Town Branch, Chennai - 600 001. The above said cheque was returned with an endorsement "Account Closed" through a return memo dated 12.02.2019. Thereafter, the legal notice was issued on 14.02.2019. The further case is that the petitioners had issued a reply notice dated 25.02.2019. Since no repayment was made, a case under Section 138 of Negotiable Instrument Act was filed before the Fast Track No.IV, Metropolitan Magistrate, George Town, Chennai and thereby the case was taken on file in C.C.No.908 of 2019 and it is pending trial.

5.This Court has considered the rival submissions and perused the materials on record.

6.Admittedly, the transaction between the petitioners and complainant was taken place in the year 2019 and the complainant firm dealing with pulses, gram and dhal and dhal items. These petitioners are the regular customers, the transaction was performed during such course of business. Accordingly, the petitioners issued the following cheques to the de facto complainant:

"(i) cheque No.008539 dated 11.02.2019 for a sum of Rs.2,00,000 (Rupees two lakhs only) drawn on State Bank of Travancore, Tiruvannamalai Branch, Tiruvannamalai;

(ii) cheque No.008541, dated 11.02.2019 for a sum of Rs.3,00,000/- (Rupees Three Lakhs Only) drawn on State Bank of Travancore, Tiruvannamalai Branch, Tiruvannamalai;

(iii) cheque No.008542, dated 11.02.2019 for a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) drawn on State Bank of Travancore, Tiruvannamalai Branch, Tiruvannamalai;

(iv) Cheque No.008543, dated 11.02.2019 for a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) drawn on State Bank of Travancore, Tiruvannamalai Branch, Tiruvannamalai;

(v) Cheque No.008544, dated 11.02.2019 for a sum of Rs.3,00,000/- (Rupees Two Lakhs Only) drawn on State Bank of Travancore, Tiruvannamalai Branch, Tiruvannamalai;

(vi) Cheque No.008545, dated 11.02.2019 for a sum of Rs.2,41,440/- (Rupees Two Lakhs Fourty one Thousand and Four Hundred and Forty Only) drawn on State Bank of Travancore, Tiruvannamalai Branch, Tiruvannamalai;"

7.Based upon the complaint given by the respondent, the case was taken on file in C.C.No.908 of 2019. The prima facie facts reveal that there was a business transaction between the petitioners and the defacto complainant. At this stage, this



Court cannot decide whether the petitioners are liable to pay the amount or not, hence, the petitioners have to workout their remedy before the trial Court by adducing oral and documentary evidence.

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8. In the result, this criminal original petition is dismissed. However, the case is of the year 2019 and the trial Court is directed to dispose of the matter within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

The Fast Track No.IV
(Metropolitan Magistrate),
George Town, Chennai.

+1cc to Mr.M.Sankar, Advocate, S.R.No.439

CrI.O.P.No.30324 of 2019

SPD(CO)
RGA(14/02/2022)