

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Cr1.O.P.No.26883 of 2018

and

Cr1.M.P.Nos.15508 and 15510 of 2018

O.Venkatachalapathy

... Petitioner/Accused No.3

Vs.

S.Govindarajan

... Respondent/Complainant

PRAYER: This Criminal Original Petition has been filed under Section 482 of Cr.P.C, to call for the complaint dated 09.10.2018 and entire records in S.T.C.No.2688 of 2017 on the file of the learned Judicial Magistrate No.IV, Salem and quash the same with respect to the petitioner herein.

For Petitioner : Mr.J.Hariharan for
M/s. KV LAW FIRM

For Respondent : Mr.K.Selvaraj

O R D E R

This Criminal Original Petition has been filed to call for the complaint dated 09.10.2018 and entire records in S.T.C.No.2688 of 2017 on the file of the learned Judicial Magistrate No.IV, Salem and quash the same with respect to the petitioner.

2. The learned counsel for the petitioner submits that the petitioner herein is A3 in S.T.C.No.2688 of 2017. The respondent herein filed a cheque bounced case under Section 138 of the Negotiable Instruments Act, for the cheque issued to the tune of Rs.5 lakhs. After issuing the statutory notice, the above S.T.C was filed and taken on file. Challenging the taking cognizance of the case against the third accused, he has preferred this petition for quashment.

3. The learned counsel for the respondent/complainant submitted that, as against the very same set of facts, totally 9 cases have been filed, out of which, 8 cases had already been dismissed by this Court dated 07.10.2021 in Cr1.O.P.Nos.26090, 26094, 26098, 26099, 26100, 26102, 26892 and 26932 of 2018

wherein it is observed that:-

"7. Though several grounds have been raised by the learned counsel for the petitioner and the respondent, this Court is of the opinion that the dispute involved in the present case is a triable issue and the grounds raised by the counsel for the petitioner are all factual in nature and it requires appreciation of evidence and this Court cannot decide the same in exercise of its jurisdiction under Section 482 of Criminal Procedure Code. It is left open to the petitioner to raise all the grounds before the Court and the same shall be considered on its own merits and in accordance with law. This Court is not inclined to interfere with the proceedings pending before the Court below. Hence this Court is not inclined to quash the complaints. However, his appearance before the trial Court is dispensed with except for their appearance for the purpose of receiving the copy of the proceedings under Section 207 Cr.P.C., framing of charges, questioning under Section 313 Cr.P.C. and on the day on which judgment is to be pronounced. However, if for any particular reason, the presence of the petitioners is necessary, the trial Court, at its wisdom, shall direct their appearance on those days."

4. The learned counsel for the petitioner/A3 contended that he is a partner on the date of issuance of the cheques and he is not an active partner in the partnership firm run by the first accused and he was already relieved from the partnership firm on 08.06.2017, while the cheque was issued only on 16.07.2017.

5. On a perusal of the averments in the petition filed, I find that the petitioner/A3 has taken a plea that on the date of issuance of the cheque namely on 08.06.2017, he is no longer in the partnership firm. However, I find that, from the petition, the first accused has moved the application before the Registrar of Firms which was approved on 26.09.2017. The date of filing of the application before the Registrar of Firms has not been stated and the order was approved on 26.09.2017 and hence, I find that there are bereft of details regarding the date on which was removed from the partnership firm and on what date the application has been filed before the Registrar of firms which is a matter for trial. Therefore, I find that the points raised by the learned counsel for the petitioner are matter to be gone into only at the time of the trial and in view of the presence

of the triable issues, I find that this is not a fit case for quashment.

6. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

nvi

To.

The Judicial Magistrate No.IV, Salem.

+1cc to Mr.K.Selvaraj, Advocate, S.R.No.39690
+1cc to M/s. KV LAW FIRM, Advocate, S.R.No.40788

CrI.O.P.No.26883 of 2018 and
CrI.M.P.Nos.15508 and 15510 of 2018

GPL(CO)
CT/13/07/2022