



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P. [MD].Nos.683 and 703 of 2020

and

CRL.M.P. [MD]Nos.273, 274, 277 and 278 of 2020

Kirolamo Kullo

... Petitioner in both Crl.O.Ps.
/ Accused No.3

Vs.

M/s.Sami Gargo Care,

Rep.by its Proprietor's Power Agent and Manager,

Palanikumar,

No.9F, Birayant Nagar 10th Street,

Tuthookudi (South Police Limit)

Crl.O.Ps. /

... Respondent in both

Complainant

COMMON PRAYER : Criminal Original Petitions filed under Section 482 of Cr.P.C. to call for the records in C.C.No.59 of 2018 and C.C.No.48 of 2018 on the file of the learned Judicial Magistrate / Fast Track Court, Thoothukudi and quash the same.

For Petitioner : Mr.R.Mathiyalagan

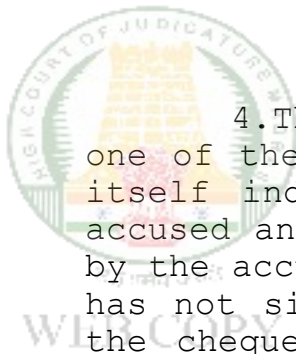
For Respondent : Mr.T.Lajapathi Roy
(in both Crl.O.Ps.)

COMMON ORDER

The proceedings in C.C.No.59 of 2018 and C.C.No.48 of 2018 on the file of the learned Judicial Magistrate / Fast Track Court, Thoothukudi are sought to be quashed in these Criminal Original Petitions.

2.The case of the complainant is that the accused persons have issued cheques in question towards the freight charges payable to the complainant. When the cheques were presented for collection, the same got dishonored for the reason 'payment stopped by the drawer'. After issuing statutory notice, private complaints have been filed. The same were taken on file by the learned Judicial Magistrate, Thoothukudi, in C.C.No.59 of 2018 and C.C.No.48 of 2018.

3.Though several grounds are raised in the petitions, the main contention of the learned counsel appearing for the petitioner is that the third accused / petitioner herein has not issued any cheques nor signed in the cheques. His further contention is that the cheques were returned only for the reasons 'signature differs'. Therefore, the entire complaint has been quashed.



4.Though some cheques have been shown to have signed only by one of the partner, it is relevant to note that the very complaint itself indicates that the number of cheques issued by the third accused and the legal notice was also about specific cheques issued by the accused. Therefore, the contention of the petitioner that he has not signed in the cheques, cannot be countenanced. A copy of the cheques referred to in the complaint and the legal notice is also produced by the respondent herein. The same clearly shows that the petitioner is also a party to the cheques. Therefore, the contention that he has not signed the cheques, has no legs to stand. With regard to the other ground that the cheque is dishonored for the reasons 'signature differs', it also cannot be countenanced.

5.It is the specific case of the complainant that the cheques were dishonored for the reasons 'payment stopped by the drawer'. Hence, this Court is unable to countenance any submissions of the learned counsel for the petitioner, as the cheques in question are drawn by the petitioner on the account maintained by them. It is for them to establish before the trial Court by bringing up evidence to rebut the legal presumption attached to the cheque under Sections 118 and 139 of Negotiable Instruments Act. Therefore, I do not find any reasons to quash the proceedings in C.C.No.59 of 2018 and C.C.No.48 of 2018 on the file of the learned Judicial Magistrate / Fast Track Court, Thoothukudi.

6.At this time, the learned counsel appearing for the petitioner seeks to dispense with the personal appearance of the petitioner before the trial Court. Therefore, the personal appearance of the petitioner before the trial Court is dispensed with on condition that he shall execute a bond for his appearance regularly. After such bond executed by the accused, the learned Judicial Magistrate shall consider to dispense with the personal appearance, except for questioning under Section 313 Cr.P.C., and at the time of passing judgment. If any failure to appear or breach of bond, the learned Judicial Magistrate can take appropriate action as per law and dispose of the complaint, within a period of four months from the date of receipt of a copy of this order.

7.For the above reasons, this Criminal Original Petitions stand dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (A.D.II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Myr

<https://hcservices.ecourts.gov.in/hcservices/>



To

1.The Judicial Magistrate,
Fast Track Court, Thoothukudi.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-9949[F] dated 04/03/2022
)

CRL.O.P. [MD].Nos.683 and 703 of 2020
03.03.2022

_RD(15.03.2022) 3P 4C