



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07/03/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.21637 of 2018

and

Crl.MP(MD)Nos.10025 and 10026 of 2018

WEB COPY

Subarathi : Petitioner/Accused No.2
Vs.

1.Ramasamy : R1/Complainant
2.Venkateshlal : R2/1st Accused

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records relating to the proceedings in STC No.335 of 2018 on the file of the Judicial Magistrate, Nagercoil, (Fast Track Court No.1), and quash the same as it has no Prima Facie case as against the petitioner.

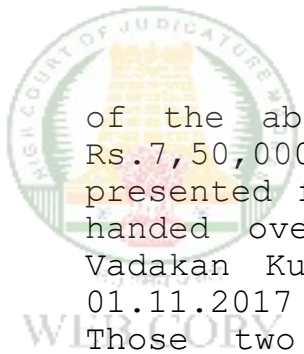
For Petitioner : Mr.Ananth C.Rajesh
For 1st Respondent : Mr.T.Lajapathi Roy
For 2nd Respondent : No appearance

O R D E R

This criminal original petition has been filed by the petitioner seeking quashment of the case in STC No.335 of 2018 on the file of the Judicial Magistrate, Nagercoil, (Fast Track Court No.1).

2.The case of the respondent in brief:-

The offence alleged is under 138 of Negotiable Instruments Act. The contents of the complaint reads that the accused persons namely Venkateshlal and Subarathi (who is the petitioner herein) are husband and wife. It is alleged that they are running a business in the name of 'Ayyappa Blue Metal Company, which is in the name of the 2nd respondent and in that company, the accused persons and the brother of the first accused namely Kumaresanlal are partners. They also introduced the complainant stating that they are ready to grant lease in respect of the above said company for five years. They demanded advance amount of Rs.30,00,000/- and Rs.10,000/- as monthly instalment amount. On various dates, the accused persons received the amount as detailed date-wise in the complaint. Totally, Rs.27,24,000/- has been received as advance amount. He was running the company for about 6 months and paid Rs.60,000/- as monthly rent. Further, they demanded that the lease period would be for five years. But that was not agreed by the complainant. Towards discharge



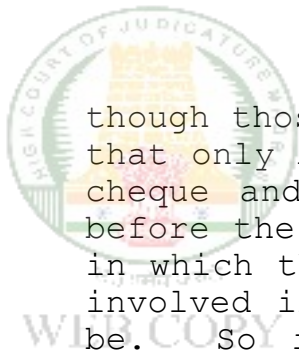
of the above said liability, they handed over the cheques for Rs.7,50,000/- each on 27/10/2014 and 15/03/2015. Those cheques were presented for payment. But dishonoured. So again, they executed and handed over two cheques bearing No.016541 drawn on ICICI Bank Vadakan Kulam on 01/10/2017 and cheque bearing No.616542, dated 01.11.2017 drawn on the above said bank for Rs.7,50,000/- each. Those two cheques were presented for payment and they were dishonoured, on 20/12/2017. After completing the legal formalities, the complaint has been filed.

3. Seeking quashment of the above said complaint, this petition has been filed by the 2nd accused, who is the wife of the first accused on the ground that she is not the drawer of the cheque, she is no-way connected with the above said company and she is not involved in the above said transaction.

4. Heard both sides.

5. It is a simple case of offence under 138 of Negotiable Instruments of Act. As stated in the preamble portion, the first accused has drawn the cheque and the second accused is the wife of the first accused.

6. Now according to the complainant, the said Ayyappa Blue Metal Company belongs to the partnership firm, of which the petitioner is also one of the partners and she is also jointly conducting the business transaction and she is also responsible for the affairs of the company namely the partnership firm. But it is the specific case of the petitioner that she is not a partner in the above said partnership firm and she is no-way involved in the transaction. The copy of the disputed cheque has also been produced, wherein we find that the first accused has signed as a drawer. We find no mention to the effect that the first accused signed in the cheque on behalf of the partnership firm. Absolutely, there is no record to show that this is the partnership firm. When a demand notice was issued, which is enclosed along with the complaint, a copy of which also made available by the trial court, we find that very same pleading has been repeated as like that of the complaint, for which reply has also been given by all the persons, wherein it has been specifically stated that Kumaresanlal and his brother Venkateshlal were doing the stone quarry business and this petitioner is his wife and she is not involved in the above said transaction or the business. For the purpose of developing the business only, the accused persons approached the company, for which also Rs.21,50,000/- were given as interest at the rate of 3 rupees per month for per 100 rupees. For some-time, they were paying interest and there-after, they could not discharge the above said amount, they also issued cheque for Rs.30,000/-, apart from the promissory note acknowledgement of the liability etc. Later, after payment of the above said amount, cheques were not returned. So according to him, it was only a loan which this petitioner is no-way involved. Even



though those factual aspects need not be gone into, the facts remain that only Al the husband of the petitioner, signed as drawer of the cheque and no document has also been produced by the complainant before the trial court to show that it is not the partnership Firm, in which the petitioner is also one of the partners and is actively involved in the above said transaction or activity as the case may be. So in the absence of any such of prima facie proof, the contention on the part of the petitioner that she cannot be fastened for any liability is to be accepted.

7.It is the basic law that the drawer of the cheque is responsible for the transaction, though section 141 of the Negotiable Instruments Act has been invoked. As mentioned earlier, absolutely there is no documentary evidence or prima facie ground to show that actually it is a partnership Firm, in which the petitioner is also one of the partners.

8.In the light of the above said legal issue, continuation of the proceedings against the accused persons will be nothing, but an abuse of process of court and law. So, it is liable to be quashed.

9.In the result, this criminal original petition stands **allowed**. The proceedings in STC No.335 of 2018 pending on the file of the Judicial Magistrate (Fast Track Court No.1), Nagercoil, Kanyakumari is hereby quashed as against the petitioner. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Deputy Registrar (A/C's)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To,

1.The Judicial Magistrate,
(Fast Track Court No.1)
Nagercoil.



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

+1 CC to M/s.ANANTH C RAJESH, Advocate (SR-10506[F] dated
08/03/2022)

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-10533[F] dated
08/03/2022)

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TP (CO)
KB(18.03.2022) 4P 5C