BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 31.01.2022
PRONOUNCED ON: 13.04.2022
CORAM
THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

Crl.O.P.(MD)Nos.11833 and 12152 of 2018
and
Crl.M.P.(MD)Nos.5434, 5373, 5512 and 5513 of 2018

Crl.O.P.(MD)No.11833 of 2018:

M.Selvi : Petitioner/Accused No.2

Vs.

Muthukumar : Respondent/Complainant

PRAYER : Criminal Original Petition has been filed under Section 482 Cr.P.C, to call for the records pertaining to S.T.C.No.446 of 2018, dated 19.06.2018, on the file of the Judicial Magistrate Court, Tiruchendur, Thoothukudi District and quash the same.

For Petitioner : Mr.V.Rajiv Rufus
For Respondent : Mr.S.R.Anbarasu

Crl.O.P.(MD)No.12152 of 2018:

V.Maharasi : Petitioner/Accused No.1

Vs.

Muthukumar : Respondent/Complainant

PRAYER : Criminal Original Petition has been filed under Section 482 Cr.P.C, to call for the records pertaining to S.T.C.No.446 of 2018, dated 19.06.2018, on the file of the Judicial Magistrate Court, Tiruchendur, Thoothukudi District and quash the same.

For Petitioner : Mr.J.Vijayaraja
For Respondent : Mr.S.R.Anbarasu

COMMON ORDER

These two Criminal Original Petitions have been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records pertaining to S.T.C.No.446 of 2018, pending on the file of the Judicial Magistrate Court, Tiruchendur and quash the same.

2. The petitioner in Crl.O.P.(MD)No.12152 of 2018 is the first accused and the petitioner in Crl.O.P.(MD)No.11833 of 2018 is the second accused in S.T.C.No.446 of 2018, on the file of the Court of

Judicial Magistrate, Tiruchendur, Thoothukudi District. The respondent/complainant has filed a private complaint under Section 200 Cr.P.C., against the petitioners for the alleged offence under Section 138 r/w 142 of the Negotiable Instruments Act. The case of the respondent/defacto complainant is that the accused 1 and 2 were the President and Secretary of Sri Perumal Women Self Help Group, that both the accused have approached the complainant and requested him to advance Rs.3,37,000/- for the urgent needs of their Self Help Group, that the accused have received Rs.3,37,000/- on 25.02.2018 from the complainant, agreeing to repay the same within one month, that they have also issued a cheque bearing No.015552, drawn on ICICI Bank, Veerapandianpattinam branch, dated 28.02.2018 for Rs.3,37,000/-, that as per the request of the accused, the complainant has presented the said cheque for collection in Indian Overseas Bank, Udankudi branch, that the cheque was returned with an endorsement 'refer to drawer', that when the returning of the cheque was informed to the accused, they have requested the complainant to wait for 40 days and thereafter to present the cheque, that as per their request, the cheque was again presented for collection, that the cheque was again dishonoured with an endorsement 'refer to drawer', that the complainant has sent a legal notice dated 24.04.2018 demanding the payment of the amount covered by the cheque, that though the accused have received the notice on 26.04.2018, they have not chosen to send any reply nor made any payment and that therefore, the complainant was constrained to lodge the above complaint.

3. The case of the first accused is that her husband was a part-time driver and was also supplier in the hotel, that she was working as domestic help in a house, that her husband got a loan of Rs.25,000/- from the respondent in 2007 and since they were not able to return the loan, the respondent started to harass them demanding the entire amount in one stroke, that they have already paid interest to the extent of Rs.30,000/-, that the respondent had forcibly taken away their land of 0.80 cents out of 2 cents, that they have taken loan of Rs.1,50,000/- in 2015 as her son was sick, that they have paid Rs.2,31,000/- towards interest, that they were not able to return the principal amount, that the respondent has been torturing them and scolding them with filthy language and he came to their house and forcibly took a cheque from her.

4. The case of the second accused is that she had never met the complainant and never gave a cheque, that she was a member of Shri Perumal Women Self Help Group from 2013 to 2016; that she was never been either the Treasurer or the President of the Group and she was never been signing authority of the said Group, that she was a Treasurer in another group viz., Anugiragh Service Organisation, that in the month of January 2018, when the first accused asked the second accused to sign acknowledging the receipt of the money from Anugiraga Service Organisation and shown the cheque to her, the petitioner/second accused happened to sign the cheque, but later it

was clarified by the staff that the signed cheque is from ICICI Bank, but the relevant bank is Bank of India, that by realising the mistake, the first accused detached the said cheque and kept the same separately and that somehow the said cheque has reached the hands of the respondent and he has utilised the same and filed the above false case.

5. It is not in dispute that the first accused has preferred a complaint against the respondent and on that basis, F.I.R. came to be registered in Cr.No.43 of 2018 for the offences under Sections 294(b), 323, 506(ii) I.P.C., and Section 4 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003.

6. As rightly contended by the learned Counsel for the respondent, both the accused in their petitions itself have specifically admitted the signatures found in the cheque in dispute. As already pointed out, the first accused in her petition has taken a stand that the respondent came to her house demanding repayment of the loan amount and at that time, he forced her to bring her cheque book and when the first accused has shown her cheque book as demanded by him, the unusable cheque which was projecting outside, was pulled out and the cheque was taken by the complainant.

7. The first accused has filed additional typed set of papers containing the copy of the complaint given by the first accused and the copy of the F.I.R., registered against the respondent.

8. It is pertinent to note that in the complaint lodged by the first accused on 12.02.2018 to the Superintendent of Police, Thoothukudi, she has specifically stated that herself and her husband, unable to bear the harassment meted out by the respondent, they have handed over the original title deed and at that time, the respondent compelled her and received the ICICI Bank cheque of Shri Perumal Women Self Help Group, after getting her signature.

9. As rightly pointed out by the learned Counsel for the respondent, though the accused have raised such allegations, they have not chosen to send any reply in response to the legal notice issued by the respondent, dated 24.04.2018. The second accused has also taken a stand that the above cheque is not supported by any consideration. As rightly pointed out by the learned Counsel for the respondent, want of consideration is a matter for trial.

10. Moreover, the second accused has also taken a stand that by mistake, she has subscribed her signature in ICICI Bank cheque belonging to Sri Perumal Self Help Group, as if it was the cheque of Anugiraga Service Organisation. Even according to the petitioners, the first petitioner was the President and the second petitioner was the member of Sri Perumal Self Help Group and both of them were the office bearers of Anugiraga Service Organisation. As rightly pointed out by the learned Counsel for the respondent, whether the

second accused has subscribed her signature in ICICI Bank cheque by mistake with an impression that it was the cheque of Anugiragh Service Organisation is a matter that cannot be gone into at this stage and it is a matter for trial.

11. The learned Counsel for the petitioners has relied on a judgment in ***Raj Kumar Khurana Vs. State of (NCT of Delhi) and another*** reported in ***2009 Crl.L.J.3454***, wherein it has been observed that the parameters for invoking the provisions of Section 138 being limited, the refusal on the part of the bank to honour the cheque on the ground that it was reported lost by the drawer would not bring the matter within the mischief of the provisions of Section 138, that the Court while exercising its jurisdiction, for taking cognizance of an offence under Section 138 of the N.I. Act, is required to consider only the allegations made in the complaint petition and the evidence of the complainant and his witnesses, if any and that it cannot take into consideration the result of the complaint petition filed by the drawee or the closure report filed by the Superintendent of Police in the First Information Report lodged by the drawer against him.

12. The above decision cannot be applied to the case on hand. In the present case, the cheque was returned dishonoured for the reason 'refer to drawer'. It is not the case of the petitioners that the cheque was reported lost by the first accused and only on the instructions of the first accused, the bank authorities have refused to honour the cheque. As already pointed out, the first accused has herself admitted that the cheque was taken from her by the complainant.

13. It is pertinent to mention that the Hon'ble Supreme Court in in ***Dhruvaram Murlidhar Sonar vs The State Of Maharashtra*** reported in ***2019(18) SCC 191***, after considering the decision of the Hon'ble Supreme Court in ***State of Haryana and Ors. v. Bhajan Lal and Others, r***eported in ***1992 Supp (1) SCC 335***, has specifically held that exercise of powers under Section 482 Cr.P.C., to quash the proceedings is an exception and not a rule and that inherent jurisdiction under Section 482 Cr.P.C., though wide, has to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in Section itself. It is also settled law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 Cr.P.C., for quashing the criminal proceedings.

14. A perusal of the complaint and other records available, makes out a prima facie case against the accused at this stage and there appear to be sufficient ground for proceeding against the accused. Hence, this Court concludes that the above Criminal Original Petitions are devoid of merits and the same are liable to

be dismissed.

15. In the result, both the Criminal Original Petitions are dismissed. Consequently, the connected Miscellaneous Petitions are also dismissed. The learned Judicial Magistrate, Tiruchendur, Thoothukudi District is directed to complete the trial and dispose of the case as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (RTI)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

SSL

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

The Judicial Magistrate Court, Tiruchendur,
Thoothukudi District

Crl.O.P.(MD)Nos.11833 and 12152 of 2018
13.04.2022

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