



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21/03/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)Nos.16511, 16520, 16537 and 16538 of 2019
and CRL MP(MD).9794, 9798, 9806 & 9808 of 2019

(1)Crl.OP(MD)No.16511 of 2019:-

Mr.R.Mariappan

:Petitioner/Accused

Vs.

Mr.R.Thangamariappan

: Respondent/Complainant

Prayer:Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to STC No.2514 of 2019 on the file of the Judicial Magistrate No.1, Kovilpatti.

For Petitioner : Mr.B.Rajesh Saravanan

For Respondent : Mr.S.Pon.Senthil Kumaran

(2)Crl.OP(MD)No.16520 of 2019:-

Mr.R.Mariappan

:Petitioner/Accused

Vs.

Mrs.S.Periyathai

: Respondent/Complainant

Prayer:Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to STC No.2286 of 2019 on the file of the Judicial Magistrate No.1, Kovilpatti.

For Petitioner : Mr.B.Rajesh Saravanan

For Respondent : Mr.S.Pon.Senthil Kumaran



(3)Crl.OP(MD)No.16537 of 2019:-

Mr.R.Mariappan

:Petitioner/Accused

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Vs.

Mr.S.Malik Hussain

: Respondent/Complainant

Prayer:Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to STC No.2468 of 2019 on the file of the Judicial Magistrate No.1, Kovilpatti.

For Petitioner : Mr.B.Rajesh Saravanan

For Respondent : Mr.S.Pon.Senthil Kumaran

(4)Crl.OP(MD)No.16538 of 2019:-

Mr.R.Mariappan

:Petitioner/Accused

Vs.

Mr.V.S.Mariappan

: Respondent/Complainant

Prayer:Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to STC No.2287 of 2019 on the file of the Judicial Magistrate No.1, Kovilpatti.

For Petitioner : Mr.B.Rajesh Saravanan

For Respondent : Mr.S.Pon.Senthil Kumaran

COMMON ORDER

These petitions have been filed seeking quashment of the case in STC Nos.2514, 2286, 2468 and 2287 of 2019 on the file of the Judicial Magistrate No.1, Kovilpatti, respectively.

2.The facts, which are common in all the cases:-

It is an offence under section 138 of the Negotiable Instruments Act. The respondent filed a complaint under section 138
<https://hcservices.ecourts.gov.in/hcservices/>



of the Negotiable Instruments Act with the following allegations:- The complainant and the accused are doing jewellery business and they were known to each other for several years. In the course of the above said business transactions, the petitioner alleged to have received money in respect of STC No.2514 of 2019. The amount involved is Rs.5,00,000/-. That amount was received as hand loan, on 06/01/2019. He assured to repay the same within a period of five months. On the date of the above said loan transaction, towards discharge of the liability, he issued the posted dated cheque drawn on City Union Bank, Usilampatti, by putting the date as 26/06/2019. It was presented for payment, on 26/06/2019, But the cheque was returned as 'present in proper zone' On 26/06/2019, it is further alleged that this petitioner did not maintain the sufficient balance in the account and the complainant is ready to prove the insufficient amount in the account at the time of presentation of the cheque. He issued a notice, dated 27/06/2019 seeking payment of money. That was not properly replied and sent a reply notice with false allegations. With the above said averments, he filed the complaint seeking punishment upon the petitioner for the offence under section 138 of the Act.

3.In respect of Crl.OP(MD)No.16520 of 2019, the amount involved is Rs.10,00,000/-. The date of loan was 12/01/2019. The cheque was presented for payment, on 14/06/2019 and it was returned with an endorsement 'present the same in proper zone'. After completing the legal formalities, the private complaint has been registered.

4.In respect of Crl.OP(MD)No.16537 of 2019, the amount involved is Rs.10,00,000/-. The date of loan was 06/01/2019. The cheque was presented for payment, on 20/06/2019 and it was returned with an endorsement 'present the same in proper zone'. After completing the legal formalities, the private complaint has been registered.

5.In respect of Crl.OP(MD)No.16538 of 2019, the amount involved is Rs.28,96,374/-. Date of loan is 17/08/2017. Purpose of the loan is to improve the business activities. The loan agreement was also executed between the parties and the petitioner agreed to pay the interest at Rs.1.50/- per month per 100/- and he promised to repay the same within a year. After several demands, he issued a cheque on 13/06/2019, for Rs.14,00,000/- drawn on City Union Bank, Kovilpatti and it was presented, on 13/06/2019 for payment and that was also returned as 'not drawn with'. After completing the legal formalities, the private complaint is filed.

6.Heard both sides.

7.During the course of argument, it was brought to the notice of this court that in all the cases, PW1 was examined and the Bank Manager was also examined, But the Bank Manager was not cross examined.



8.The ground on which these petitions came to be filed is that CTS scheme was introduced from 1st February 2008 in New Delhi. In so far as Chennai is concerned, it was introduced on 24/09/2011. After the migration of the entire cheque volume from MICR system to CTS, the traditional MICR based cheque processing has been discontinued across the country. So, this circular by Reserve Bank of India is dated 30/06/2020, which was the updated circular.

9.According to the learned counsel appearing for the petitioner, when the system has been migrated and the presentation of the cheque by way of MICR system has been suspended, the disputed cheques were presented for payment in the concerned banker, knowing fully well that no such system was in existence on the presentation of the cheques. According to the petitioner, it is void cheques in respect of Cheque Nos.16511 and 16520 which have been returned with an endorsement 'present in proper zone'.

10.According to the learned counsel appearing for the petitioner, this will not amount to dishonour of cheque due to insufficiency of funds. So according to him, the entire process of criminal proceedings is nothing, but an abuse of process of court and law and the offence under section 138 of the Negotiable Instruments Act will be attracted only if the cheque has been dishonoured due to non payment of the money.

11.But the learned counsel appearing for the respondent would submit that on the date of presentation of the cheque, the petitioner was having only Rs.2,500/- in his account and knowing fully that he has no sufficient fund in the account, he has issued the cheque, which has been dishonoured and he is also ready to prove the insufficiency of funds during the course of evidence. He would further submit that so far, two witnesses have been examined in all the cases. The Bank Manager was also examined. But no cross examination was undertaken by the petitioner so far. Without cross examining the witnesses, these three petitions came to be filed. The Bank Manager has given a statement to the effect that after introduction of core banking system, the cheques which are presented for payment will not be forwarded or referred to the concerned bank. But it will be forwarded through Internet to the Central Collection Unit for honouring the cheque. So according to him, on 01/06/2019 to 30/06/2019 only Rs.2,426/- was available in the account of the petitioner. According to him, this is enough to come to the conclusion that the petitioner has committed the offence under section 138 of the Negotiable Instruments Act.

12.In the facts and circumstances of this case, I am not in agreement with the learned counsel appearing for the petitioner on the issue that the cheques were not returned not for insufficiency of funds, but directing the petitioner to present the same before the proper zone.



13.The offence under 138 of the Negotiable Instrument Act will complete, after the accused persons failed to response to the demand notice. So, whether in the facts and circumstances of the case, the offence will be attracted or not is for the trial court to consider. Since the trial is already commenced, unless there is a compelling circumstances brought on record by the petitioner, based upon the RBI circular, the proceedings cannot be quashed.

14.In so far as the other matter is concerned namely Crl.OP(MD) Nos.16538 of 2019, it is returned stating that 'not drawn with.' So whether this return will attract the offence under section 138 of the Negotiable Instruments Act is also a matter for consideration by the trial court, after going through the entire process of trial. So I find absolutely, no merit in all the petitions.

15.In the result, all the petitions are **dismissed**. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-I)

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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
The Judicial Magistrate No.I,
Kovilpatti,

+1 CC to M/s.B.RAJESH SARAVANAN, Advocate (SR-13404[F] dated 22/03/2022)

+1 CC to M/s.S.PONSENTHILKUMARAN, Advocate (SR-13591[F] dated 22/03/2022)

Crl.O.P.(MD)Nos.16511, 16520, 16537 and 16538 of 2019

21/03/2022

KG(CO)

TR(04.04.2022) 5P 4C