



WEB COPY

No.7, Mangayarkarasi College Road.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.12.2021

Pronounced on : 10.01.2022

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

CRL.O.P. (MD) .Nos.18392, 18525 and 18633 of 2019
and
Crl.M.P (MD) Nos.10801, 10879 and 10941 of 2019

P.Dhayalan

: Petitioner/Accused
(in all petitions)

Vs.

M/s.Solaimalai Enterprises,
No.7, Mangayarkarasi College Road,
Solaimalai Nagar, Paravai, Madurai.
The Proprietor,
Anand rep. through his
Power agent Jeyarathina Kumar,
S/o.Kittappa
(Villakkuthun Police Station)

: Respondent / Complainant
(in all petitions)

COMMON PRAYER : Criminal Original Petitions filed under Section 407 of Cr.P.C, to withdraw the S.T.C.Nos.95, 739 and 93 of 2016 respectively, pending before the Judicial Magistrate Court No.I, Madurai (FTC JM Level) and transfer to the file of the learned Judicial Magistrate, No.II, Dindigul, Dindigul District to be tried along with the C.C.No.602 of 2016 by the above said respondent/complainant as a defacto complainant.

(in all petitions)

For Petitioner : Mr.S.Sarvagn Prabhu

For Respondent : Mr.D.Saravanan

COMMON ORDER

These Criminal Original Petitions have been filed, invoking Section 407 of Cr.P.C, seeking orders to withdraw the cases in S.T.C.Nos.95, 739 and 93 of 2016 pending on the file of the Court of the Judicial Magistrate No.I, Madurai (FTC JM Level) and transfer the same to the file of the Court of the Judicial Magistrate No.II, Dindigul, Dindigul District to be tried along with the C.C.No.602 of 2016 pending on the file of the said Court.



2.The petitioner is the sole accused in S.T.C.Nos.95, 739 and 93 of 2016 pending on the file of the Judicial Magistrate No.I, (FTC JM Level), Madurai. The petitioner is the second accused in C.C.No.602 of 2016 pending on the file of the Court of the Judicial Magistrate No.II, Dindigul.

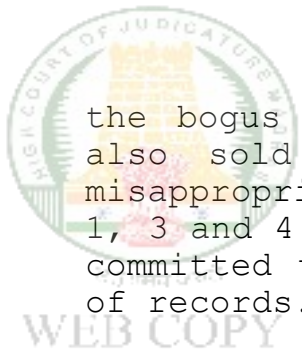
WEB COPY

3. The respondent/complainant in all the three STC cases is M/s.Solaimalai Enterprises, a Proprietorship concern and the Proprietor of the said concern, through his power agent, has filed the complaints under Section 200 Cr.P.C against the petitioner herein for the alleged offence under Section 138 r/w 142 of the Negotiable Instruments Act.

4.The case of the respondent/complainant is that the petitioner/accused had purchased certain articles from the complainant concern and for the payment of the sale price, issued three cheques all dated 11.12.2013 for a sum of Rs.2,05,097/- drawn on Central Bank of India Atpar Branch, for a sum of Rs.3,03,372/- drawn on Karur Vysya Bank, Dindigul Branch and that Rs.2,70,261/- drawn on Axis Bank Atpar Branch, respectively, in favour of the complainant, that when the cheques were presented for collection, two cheques were returned for want of sufficient funds in the bank account of the accused and the third cheque was returned for the reason as "payment stopped by the drawer", that the complainant has then sent a legal notice dated 03.03.2014 to the accused demanding the payment of amount covered by the cheques, that two postal covers were returned unserved as refused and the third one was returned unserved as the same was not claimed by the accused, that since the accused has not chosen to make any payment, the complainant was forced to file private complaints against the petitioner herein for the alleged offence under Section 138 r/w 142 of Negotiable Instruments Act and the same were taken on file in S.T.C.Nos.95, 739 and 93 of 2016 and that the petitioner herein has entered into appearance in all the three cases and the said cases are pending on the file of the Court of the Judicial Magistrate No.I, (FTC JM Level), Madurai.

5.It is not in dispute that the Manager of the complainant concern has lodged a complaint with Dindigul District Crime Branch against the staffs of their own concern and also the petitioner herein, that the Police, after investigation, has laid the charge sheet against the four accused including the petitioner herein for the alleged offence under Sections 406, 420, 465, 468, 471, 477(A) and 120 B IPC and that the case was taken on file in C.C.No.602 of 2016 and the same is pending on the file of the Court of the Judicial Magistrate No.II, Dindigul.

6.The case of the prosecution in C.C.No.602 of 2016 is that the accused 1, 3 and 4, who were working in M/s.Solaimalai Enterprises, had supplied goods to Ramdev Stores, Central Store, Shahul Store and



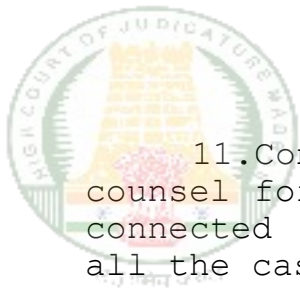
the bogus cheques of the petitioner/2nd accused, that they have also sold the goods to outsiders and that thereby, they had misappropriated to the tune of Rs.20,10,567/- and that the accused 1, 3 and 4 had conspired with the 2nd accused/petitioner herein and committed the offence of cheating, misappropriation and fabrication of records.

7.It is the specific case of the petitioner that in the enquiry consequent to the complaint lodged by the complainant with District Crime Branch, the petitioner, in order to help his long time friend Senthil Kumar, the first accused in C.C.No.602 of 2016, had issued four cheques in favour of the complainant for security purpose on condition that the above three cheques should be returned on making payment of the above said misappropriated amount by the said Senthilkumar, that the complainant without keeping up their promise, had insisted the District Crime Branch to register the case and on that basis, FIR came to be registered in Crime No.29 of 2014, on 01.03.2014 and that subsequently, charge sheet has been filed and the case in C.C.No.602 of 2016 is pending for trial.

8.It is the further case of the petitioner that without disclosing the real facts, the complainant inspite of mentioning the particulars of the three cheques in the complaint and in the statements under Section 161 of Cr.P.C., with false allegations and *malafide* intention filed the proceedings under Section 138 of Negotiable Instruments Act before the Court of the Judicial Magistrate No.I, Madurai and that therefore, the petitioner was constrained to file the above petitions to withdraw the STC cases and to transfer the same to the Court of the Judicial Magistrate No.II, Dindigul to be tried along with C.C.No.602 of 2016.

9.No doubt, as rightly contended by the learned counsel for the respondent, STC cases were filed as private complaints under Section 200 Cr.P.C whereas on the basis of the final report filed by the Police, the case in C.C.No.602 of 2016 was taken cognizance and as such, the scope of enquiry or trial procedure to be adopted are entirely different. Moreover, it is pertinent to note that the joint trial of Summary Trial Case instituted as private complaint for cheque bouncing cases with the Calender Case instituted on the basis of Police report is unknown to criminal jurisprudence. Hence, the prayer for joint trial cannot legally be entertained.

10.As rightly contended by the learned counsel for the petitioner, the complainant in the private complaint initiated under Section 138 and 142 of the Negotiable Instruments Act, has specifically alleged that the petitioner herein has issued the cheques to discharge his liability of paying the sale price. But in the Police case, it has been alleged that the petitioner in conspiracy with the other accused had issued bogus cheques to defraud the complainant concern and thereby allowing the other accused to misappropriate the amounts due to the complainant.



11. Considering the above, as rightly contended by the learned counsel for the petitioner, the STC cases and the Calender Case are connected cases and to find out the truth and to do real justice, all the cases are to be tried by the same Court.

WEB COPY

12. As rightly contended by the learned counsel for the petitioner, no prejudice would be caused to the complainant or to the prosecution or to the other accused in C.C.No.602 of 2016, if the STC cases are transferred to the file of the Court of the Judicial Magistrate No.II, Dindigul. Hence, this Court decides that the cases in S.T.C.Nos.95, 739 and 93 of 2016 pending on the file of the Judicial Magistrate Court No.I, Madurai (FTC JM Level) are to be withdrawn from the file of the Judicial Magistrate Court No.I, Madurai (FTC JM Level) and to transfer the same to the Court of the Judicial Magistrate No.II, Dindigul and the learned Judicial Magistrate No.II, Dindigul, after taking STC cases on file, is to be directed to conduct the trial of all the cases simultaneously.

13. In the result, these Criminal Original Petitions are allowed and the cases in S.T.C.Nos.95, 739 and 93 of 2016 are ordered to be withdrawn from the file of the Court of Judicial Magistrate No.I, Madurai (FTC JM Level) and to be transferred to the Court of Judicial Magistrate No.II, Dindigul, Dindigul District. The learned Judicial Magistrate No.II, Dindigul is directed to conduct the trial of STC cases and the Calender Case simultaneously and to dispose of the cases within a period of five months from the date of receipt of copy of this order. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

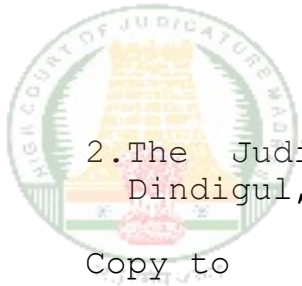
das

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 No.I,
(FTC JM Level), Madurai.

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



2.The Judicial Magistrate No.II,
Dindigul, Dindigul District.

Copy to

The Registrar(Judicial),
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.D.SARAVANAN, Advocate, SR-1198 dated 11/01/2022

+1 CC to M/s.S.SARVAGAN PRABHU, Advocate, SR-1169 dated 11/01/2022

CRL.O.P. (MD) .Nos.18392, 18525 and 18633 of 2019
and
Crl.M.P (MD) Nos.10801, 10879 and 10941 of 2019
10.01.2022

RK(27/01/2022) 5P 6C