



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2023

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THE HONOURABLE Ms. JUSTICE R.N.MANJULA

Crl.O.P Nos.763, 768, 805, 810, 817, 834, 838, 840, 849, 859, 873,
878 885, 890, 894, 900, 901, 938, 944 & 949 of 2021
and Crl.M.P. Nos.438, 439, 442, 444, 470, 472, 473, 474, 504, 505,
510, 511, 513, 515, 520, 523, 530, 531, 544, 545, 547, 549, 551, 554,
557, 559, 561, 562, 563, 564, 565, 566, 593, 595, 596, 598, 602 & 603
of 2021

Crl.O.P. No.763 of 2021

R.Munirathinam

... Petitioner

Vs.

M.Gajendran

... Respondents

Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the entire records in C.C. No.9233 of 2019 on the file of the Fast Track Court II, Metropolitan Magistrate, Egmore (Allikulam), Chennai – 600 003 and quash the same.

For Petitioner : Mr.D.Sivakumar

For Respondent : Mr. Hari Hara Arun Somasankar
assisted by Mr.V.Deepan Raj Krishna



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COMMON ORDER

These petitions have been filed to call for the entire records in C.C. Nos.9233, 9167, 9166, 9234, 9240 & 9241 of 2019 & 625, 624, 622, 617, 620, 616, 621, 619, 618, 623, 572, 626, 627 & 628 of 2020 on the file of the Fast Track Court II, Metropolitan Magistrate, Egmore (Allikulam), Chennai – 600 003 and quash the same.

2. One R.Munirathinam is the petitioner / sole accused in C.C. Nos.9233, 9166, 9234, 9240 & 9241 of 2019 & 622, 617, 620, 616, 621, 619, 618, 572, 627 & 628 of 2020 and M/s.Everest Blue Metals, R.Munirathinam, the Managing Partner of M/s.Everest Blue Metals and M.Raja, Partner of M/s.Everest Blue Metals are the petitioners / accused in C.C. Nos. 9167 of 2019 & 625, 624, 623, 626 of 2020. The complainants in all these cases are the members of same family. All these cases have been filed against the respective petitioners on the allegation that the cheque issued by them towards discharge of liability got dishonoured due to insufficient funds. After having received the intimation that the cheques have been returned for want of funds, the respective complainants have filed a complaint under Section 138 of



the Negotiable Instruments Act,

1881.

3. The learned counsel for the petitioners submitted that the signed unfilled documents which has been issued to the complainants at the time when the petitioners availed loans was misused by the respective complainants for the purpose of these cases; since the total cheque amount would arrive at a sum of Rs.30,00,00,000/- the very nature of the case would itself can be presumed to be unbelievable; in the complaint the respondents did not elaborate about the interest and other terms of the loan; the petitioners have issued reply notice immediately after receiving the statutory notice and in which they have stated as to how they are not liable to pay the cheque amount; the complainants have not stated anything about the contents of the reply notice in their proof affidavit filed before the Court; since the respondents have suppressed the material facts and have not come to Court with clean hands, these petitions are liable to be quashed.



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4. The learned counsel for the respondents / complainants submitted that the fact that the cheques have been signed and issued by the petitioners is not disputed; for a case filed under Section 138 of Negotiable Instruments Act, for dishonour of cheque, it is sufficient to make out a case by proving the fundamental fact that the cheque was signed by the drawer; since the respondents / defacto complainants are entitled to get the initial presumption as contemplated under Section 139 of Negotiable Instruments Act in their favour, they have made out a prima facie case.

5. The complaints on the face of it would show that the cheque issued by the petitioners have got bounced for want of funds. As rightly submitted by the learned counsel for the respondents that the petitioners did not deny the execution of the cheques. The one and only contention of the learned counsel for the petitioners is that the cheques have been issued just for the purpose of security for the loan availed from the complainants and that have been misused to the benefit of the complainants by filling it up as per the means of the respondent.



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6. It is right that the petitioners have issued a reply notice to the statutory notice given by the complainants and narrated their version of the facts. As cited already, there is always a presumption in favour of the complainants that the cheque has been issued towards discharge of debt or legally enforceable liability, when the execution is not denied.

7. Though the petitioners had set his defence in their reply notice, those are all question of facts and that cannot be dealt at length now. When the complainants make out a prima facie case by proving that the cheques have been issued by the executant and the executant did not deny his signature, the trial Court could have very well satisfied about the prima facie nature of the case and taken cognizance of the same. Only when trial is allowed to continue, the real facts can be unearthed. Hence I feel it is appropriate to direct the learned Judge to take up all the cases simultaneously for trial and dispose them as expeditiously as possible.



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Crl.O.P No.763 of 2021 and batch



8. Accordingly, these Criminal Original Petitions are disposed with a direction to the learned Metropolitan Magistrate, Fast Track Court II, Egmore (Allikulam), Chennai – 600 003, to conduct simultaneous trial in C.C. Nos.9233, 9167, 9166, 9234, 9240 & 9241 of 2019 & 625, 624, 622, 617, 620, 616, 621, 619, 618, 623, 572, 626, 627 & 628 of 2020 and dispose of the same as expeditiously as possible. The petitioners are at liberty to raise all their contentions now made before this Court, by way of defence at the time of trial. Connected miscellaneous petitions are closed.

10.01.2023

Index : Yes/No
Speaking Order : Yes / No
bkn



Crl.O.P No.763 of 2021 and batch



WEB COPTTo:

1. The Metropolitan Magistrate,
Fast Track Court II,
Egmore (Allikulam),
Chennai – 600 003.
2. The Public Prosecutor,
High Court, Madras.



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R.N.MANJULA, J.,

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838, 840, 849, 859, 873, 878 885, 890, 894, 900,
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