



WEB COPY



Crl.O.P.No.6474 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.6474 of 2021
and Crl.M.P.Nos.4277 & 4278 of 2021

1. M/s. Omshakthy Agencies
(Madras) Pvt Ltd.,
Reptd. By its Managing Director,
Omshakthy Tower-II, TS-65,
Sidco Industrial Estate,
Ekkattuthangal,
Chennai – 600 032.
2. N.R.Manigandan,
Managing Director,
Omshakthy Agencies (Madras) Pvt. Ltd.,
Omshakthy Tower-II, TS-65,
Sidco Industrial Estate,
Ekkattuthangal,
Chennai – 600 032.
3. R.R.Thiruponraj,
Managing Director,
Omshakthy Agencies (Madras) Pvt. Ltd.,
Omshakthy Tower-II, TS-65,
Sidco Industrial Estate,
Ekkattuthangal,
Chennai – 600 032.
4. R.Ramachandran,
Authorised Signatory,
Omshakthy Agencies (Madras) Pvt. Ltd.,
Omshakthy Tower-II, TS-65,



Crl.O.P.No.6474 of 2021

WEB COPY

Sidco Industrial Estate,
Ekkattuthangal,
Chennai – 600 032.

...Petitioners

Vs.

Nirmala

... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records in respect of S.T.C.No.62 of 2021, pending on the file of the learned Judicial Magistrate Court-II, Ponneri, and quash the same as contrary to law and illegal and discharge the petitioner.

For Petitioners : Mr.R.Munuswamy

For Respondent : No appearance

ORDER

This petition has been filed to quash the proceedings in S.T.C.No.62 of 2021, on the file of the learned Judicial Magistrate Court-II, Ponneri, thereby taken cognizance for the offences under Section 138 of the Negotiable Instruments Act (hereinafter called as “the NI Act”), as against the petitioners.

2. The respondent is the complainant and she lodged complaint for the offence under Section 138 of NI Act as against the petitioners.

The crux of the complaint is that the petitioner is one of the legal heir of



Crl.O.P.No.6474 of 2021

one Kanniammal. Without giving any share and without the consent of the petitioner, the property which were derived by the said Kanniyammal was sold out in favour of the accused persons. Therefore, one of the other legal heir filed suit in O.S.No.141 of 2016 before the District Munsif Court, Ponneri, challenging the sale deed executed in favour of the accused and also subsequent sale deed. Thereafter, there was compromise arrived between them and the accused persons agreed to settle a sum of Rs.50,00,000/- towards the complainant in the said suit and others. Accordingly, they issued cheque and the cheque were presented for collection. But all the cheques were returned dishonoured for the reason that payment stopped by the drawer. After issuance of statutory notice the respondent lodged the complaint.

3. Heard the learned counsel appearing for the petitioner. Though notice served on the respondent, no one is appeared before this Court either in person nor through counsel.

4. It is seen from the record that the original owner of the property is one Kanniyammal. She acquired the said property by way of self acquisition, situated at Peruvoyal Village, Gummidipoondi Taluk,



Crl.O.P.No.6474 of 2021

Thiruvallur District, comprised in Survey No.124/3 ad measuring 0.35 acres by the sale deed dated 01.10.1965 vide document No.3047/1965.

Another property comprised in survey No.117/8 ad measuring 30 cents by way of sale deed dated 01.10.1965, vide document No.3048/1965 and the land comprised in survey No.117/7 ad measuring 28 cents by the registered sale deed dated 01.10.1965 registered vide document No.3049/1965.

5. While being so, one N.Parthiban, one of the grandchildren of the said Kanniamaal born through her second daughter had obtained settlement deed dated 06.03.2008, registered vide document No.872/2008 in respect of the said property which was purchased by the said Kanniammal. However it was cancelled and thereafter she executed power of attorney in favour of one K.Loganathan vide registered document No.484/2008 dated 27.08.2008. The power of attorney with the knowledge of the family members sold out the entire property in favour of the petitioners by the registered sale deed dated 19.09.2008, vide document No.4128/2008.



Crl.O.P.No.6474 of 2021

6. Thereafter the petitioner had entered into tripartite agreement with M/s. Mahindra World City Developers Limited, Sipcot.

The petitioners have acquired the property and subsequent handed over the property in favour of the M/s. Mahindra world city Developers Limited, to develop the same. Accordingly, after purchase of the property, the petitioner by the registered sale deed dated 22.12.2015 vide document No.55/2016 executed sale deed in favour of M/s. Mahindra World City Developers Limited.

7. The person who claimed to be the legal heir of the said Kanniammal filed suit in O.S.No.141 of 2016 on the file of the District Munsif Court, Ponneri, challenging the sale deed executed in favour of the petitioner and subsequent sale deeds. In order to settle the issue the respondent paid a sum of Rs.20,00,000/- to one of the legal heir. However the respondent no way connected with the property and also she is not a legal heir of the said Kanniammal. Even though, she misused the cheque issued to one of the legal heir before settling the issue and was presented for collection.



Crl.O.P.No.6474 of 2021

8. In fact, the petitioner by the letter dated 06.11.2019, requested not to present the cheque. The said letter was received by the respondent and others. However the cheques were presented for collection. Therefore, the petitioner issued stop payment letter to their banker. Therefore, the alleged cheques were not at all issued for any legally enforceable debt, no amount was borrowed by the petitioners. In fact, on receipt of the statutory notice, the petitioner categorically replied by the reply notice dated 23.02.2020. The relevant portion is as follows :-

“8. My clients state that while so, again after few months your client along with some elders of the village and expressed their inability to produce legal heirship certificate of Kanniammal, but they produced death certificate of Kanniammal and requested my clients to pay the amount. After few sittings of negotiations my clients had agreed to give 5 cheques each for Rs.10.00 lakhs, out of 5 cheques 2 cheques got realized and three cheques got time barred. Therefore, your client and other family members requested my clients to issue fresh cheques and returned the 3 cheques. Having considered the request of your client and others, 1st of my clients had issued 3 cheques afresh, which are also detailed in your notice under reply. Unfortunately, immediately within a day or two after issuing three cheques to your client and others,



WEB COPY



Crl.O.P.No.6474 of 2021

my clients had received a letter, dated 04.11.2019 from P.Rajesh, Vijaya, Jayaselvi and Gaja and my clients were really shocked and surprised to come to know from the letter that these four persons had claimed that they are also legal heirs of the deceased Kanniammal, as she had two daughters and they are sons and daughters of one of the daughters of Kanniammal, namely Gowri, who was eldest daughter of her and they had also requested my clients to pay 50% of the amount, which my clients had proposed to pay to Kanniammal. The said Rajesh and others had also produced relevant documents to substantiate their contentions. Immediately upon receipt of the said letter, in turn my clients had informed your client and others by letter, dated 06.11.2019 thereby informing them including your client not to present the cheques and also advised them to sort out the legal heirship issue and rival claim made by Rajesh and others the said letter was duly received by your client and others. Simultaneously my clients had also informed their banker not to honour the cheques and to stop payment for the same and the same was also duly informed and communicated to your client and others. Despite receipt of letter from my clients, your client had proceeded further to deposit the cheques and got it returned and issued the notice under reply, which is highly atrocious, unjustifiable and illegal.”



Crl.O.P.No.6474 of 2021

However, it was not received by the respondent. Therefore, no offence is made out as against the petitioners under Section 138 of NI Act, since the alleged cheques were not issued for legally enforceable debt.

9. Accordingly, the proceedings in S.T.C.No.62 of 2021, on the file of the learned Judicial Magistrate Court-II, Ponneri, is hereby quashed and the Criminal Original Petition stands allowed. Consequently, connected miscellaneous petitions are closed.

02.11.2023
($\frac{1}{2}$)

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order

rts



Crl.O.P.No.6474 of 2021

WEB COPY To

1. The Judicial Magistrate Court-II,
Ponneri.



WEB COPY



Crl.O.P.No.6474 of 2021

G.K.ILANTHIRAIYAN. J.

rts

Crl.O.P.No.6474 of 2021
and Crl.M.P.Nos.4277 & 4278 of 2021

02.11.2023
($\frac{1}{2}$)