



WEB COPY



Crl.O.P.Nos.7335 & 7628 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

Crl.O.P.Nos.7335 & 7628 of 2021

and

Crl.M.P.Nos. 4881, 4882, 5058 & 5059 of 2021

P. Deepak ...Petitioner / A2 in Crl.O.P.No.7335 of 2021

A. Hemalatha ...Petitioner / A1 in Crl.O.P.No.7628 of 2021

-Vs-

C. Appar ... Respondent in both Crl.O.Ps

Prayer: Criminal Original petitions filed under Section 482 of Code of Criminal Procedure, to call for the records in C.C.No.3835 of 2019 on the file of the Metropolitan Magistrate, III Fast Track Court, Saidapet, Chennai and to quash the same.

For Petitioner : Ms. G. Nevedita, in both Crl.O.Ps

For Respondent : Mr. D. Veerasekaran, in both Crl.O.Ps

COMMON ORDER

These Criminal Original Petitions have been filed seeking to quash the impugned proceedings in C.C.No.3835 of 2019 on the file of the Metropolitan Magistrate, III Fast Tract Court, Saidapet, Chennai, filed for



CrI.O.P.Nos.7335 & 7628 of 2021

the alleged offence under Section 138 of the Negotiable Instruments Act.

WEB COPY

2.It is alleged in the impugned complaint that the petitioners in both the captioned quash petitions had issued a cheque towards the discharge of their joint liability to the respondent and when the said cheque was presented for collected, it was returned with an endorsement 'Payment Stopped by the Drawer' and thereafter, inspite of the statutory notice, they did not made the payment.

3.The learned counsel for the petitioners submitted that the husband P.Deepak / A2 would not liable to prosecuted under Section 138 of the Negotiable Instruments Act, since the cheque was admittedly issued by A.Hemalatha / A1 from her account. The learned further submitted that the respondent had borrowed a sum of 50,00,000/- from A2 and towards discharge of the said loan, he had paid Rs.10,40,000/- and thereafter using the stolen signed cheque of the 1st accused, the respondent has initiated the impugned complaint. The learned counsel further submitted that the statement of accounts of the A2, Deepak would show that a sum of Rs.50,00,000/- was transferred to the account of the complainant. The learned counsel for the petitioner therefore submitted



Crl.O.P.Nos.7335 & 7628 of 2021

that the impugned complaint is nothing but an abuse of process of law.

WEB COPY

4.The learned counsel for the respondent submitted that though the cheque was issued from the account of the 1st accused, the 2nd accused is also liable because the cheque was issued towards the liability of the 2nd accused to the complainant. The learned counsel submitted that the submission of the learned counsel for the petitioners cannot be countenanced as the respondent has given the details of the transactions and as to how the petitioners are liable to pay the amount to the complainant. The learned counsel further submitted that the issue as to whether the petitioners are liable to pay the cheque amount is a matter, which has to be adjudicated before the trial Court and prayed for dismissal of the quash petition.

5.This Court on a perusal of the impugned complaint and on hearing the submissions made by the learned counsels, finds that the prosecution cannot be maintained as against the petitioner / A2, P. Deepak in Crl.O.P.No.7335 of 2021. Admittedly, the cheque was issued from the account of A1. The prosecution can be filed under Section 138 of NI Act, only against the drawer of the cheque. Merely because there



Crl.O.P.Nos.7335 & 7628 of 2021

are transactions between the 2nd accused and the complainant it would not furnish a cause of action to initiate prosecution under Section 138 of the Negotiable Instruments Act. Therefore, the impugned prosecution as against the petitioner / A2 in Crl.O.P.No.7335 of 2021 is liable to be quashed and the same is quashed.

6.As regards the submissions of the learned counsel for the petitioners that it is the respondent who is liable to pay the amount to the petitioners and the bank transactions establish the said facts, this Court is of the view that the said submission has to be adjudicated only before the trial Court. Hence, this Court is not inclined to entertain the quash petition insofar as the petitioner / A1 / Hemalatha in Crl.O.P.No.7628 of 2021. However, the petitioner / A1 is at liberty to raise all points before the trial Court. Since the Petitioner / A1 is a lady, her personal appearance before the trial Court is dispensed with, unless the learned Magistrate considers her presence necessary for the progress of the trial.

7.Since, the case is of the year 2019, the learned Magistrate may conduct the trial as expeditiously as possible and preferably complete it within a period of six months from the date of receipt of a copy of this



Crl.O.P.Nos.7335 & 7628 of 2021

order.

WEB COPY

8.It is made clear that the trial Court shall consider the evidence on record without being influenced by any of the observations made in this order.

9.In the result,

(i) Crl.O.P.No.7335 of 2021 is allowed.

(ii) Crl.O.P.No.7628 of 2021 is dismissed.

(iii) Consequently, connected Criminal Miscellaneous Petitions are closed.

20.06.2023

smv

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

To,

1. The Metropolitan Magistrate, III Fast Track Court, Saidapet, Chennai.



WEB COPY

2. The Public Prosecutor,
High Court of Madras.



CrI.O.P.Nos.7335 & 7628 of 2021

SUNDER MOHAN,J.
smv



WEB COPY



CrI.O.P.Nos.7335 & 7628 of 2021

CrI.O.P.Nos.7335 & 7628 of 2021

20.06.2023