



Crl.O.P.Nos.18693 of 2023 and 20550 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2023

CORAM :

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

**Crl.O.P.Nos.18693 of 2023 and 20550 of 2022
and Crl.M.P.Nos.13449 and 13450 of 2022 in Crl.O.P.No.20550 of 2022**

In Crl.O.P.No.18693 of 2023 :

A.Loganathan .. Petitioner

Versus

1. K.Pathasarathy
2. D.Sridhar .. Respondents

In Crl.O.P.No.20550 of 2022 :

1. K.Parthasarathy
2. D.Sridhar .. Petitioners

Versus

A.Loganathan .. Respondent

Prayer in Crl.O.P.No.18693 of 2023 : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to direct the learned Judicial Magistrate, Alandur to take cognizance of the offences committed under Sections 415, 405, 409 and 403 of Indian Penal Code as well in the complaint in C.C.No.137 of 2022 and conduct trial in respect of the same



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along with offence punishable under Sec.138 of Negotiable Instruments Act, 1881 in accordance with law.

Prayer in Crl.O.P.No.20550 of 2022 : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records and to quash the proceedings in C.C.No.137 of 2022 pending on the file of the learned Judicial Magistrate, F.T.C, Alandur.

For Petitioner : Mr.E.Elayaraj Kumar
(in Crl.O.P.No.18693 of 2023) for Mr.T.Sundaranathan

For Petitioner : M/s.S.Elambharathi
(in Crl.O.P.No.20550 of 2022)

ORDER

The issue involved in both these cases is common and hence, both the petitions are taken up together, heard and disposed off through this common order.

2. Crl.O.P.No.20550 of 2022 has been filed by the petitioners herein to quash the proceedings in C.C.No.137 of 2022 pending on the file of the learned Judicial Magistrate, F.T.C, Alandur. Crl.O.P.No.18693 of 2023 has been filed by the complainant challenging the cognizance order passed by the learned Judicial Magistrate, F.T.C, Magisterial level, Alandur, dated 26.05.2022.



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3. Heard Mr.E.Elayaraj Kumar, learned Counsel for the petitioner in Crl.O.P.No.18693 of 2023 and M/s.S.Elambharathi, learned Counsel for the petitioners in Crl.O.P.No.20550 of 2022.

4. The petitioner in Crl.O.P.No.18693 of 2023 is the complainant and he filed a complaint before the Court below against the petitioners in Crl.O.P.No.20550 of 2022 for offence under Section 138 of the Negotiable Instruments Act, 1881 and for offence of cheating. The Court below took cognizance by order, dated 26.05.2022 for offence under Section 138 of the Negotiable Instruments Act, 1881 and issued summons to the accused persons.

5. The petitioners in Crl.O.P.No.20550 of 2022 contend that the first petitioner is the signatory to the cheque and the second petitioner, admittedly did not issue the cheque in favour of the complainant. In view of the same, the second petitioner has taken a stand that he cannot be made to face the prosecution for offence under Section 138 of the Negotiable Instruments Act, 1881 since he is not the drawer of the cheque.



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6. The first petitioner has taken a stand that the cheque was given as security for a transaction that took place between the complainant and one Iruthayam Sugadoss and the said person has already been declared as insolvent and the complainant had already made a claim by filing an application for the very same amount of Rs.65,00,000/-. Therefore, according to the first petitioner, this vital fact has been concealed and the complaint has been filed and further, the cheque that was given as security has been misused. On these grounds, the first petitioner is seeking for quash of the proceedings pending before the Court below.

7. The case of the complainant is that the complaint was given not only for offence under Section 138 of the Negotiable Instruments Act, 1881 but also for the offence of cheating and criminal breach of trust. According to the complainant, the Court below went wrong in taking cognizance of the complaint only for offence under Section 138 of the Negotiable Instruments Act, 1881. Hence, the cognizance order has been put to challenge.



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8. This Court carefully went through the complaint filed in C.C.No.137 of 2022. On going through the same, prima facie, the offence is made out for offence under Section 138 of the Negotiable Instruments Act, 1881. The Court below while taking cognizance by order, dated 26.05.2022 had given reasons as to why the cognizance was taken only for offence under Section 138 of the Negotiable Instruments Act, 1881. The order does not suffer from any infirmity or illegality and it does not warrant interference of this Court.

9. The second petitioner in Crl.O.P.No.20550 of 2022 is admittedly not the drawer of the cheque. Hence, the proceedings cannot be continued as against the second petitioner for offence under Section 138 of the Negotiable Instruments Act, 1881. Consequently, insofar as the second petitioner is concerned, the proceedings will have to be interfered.

10. The issue that has been raised by the first petitioner requires appreciation of facts and that exercise cannot be done in this quash petition. It is therefore left open to the first petitioner to raise all the grounds before



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the Court below and the same will be considered on its own merits and in accordance with law.

11. It is made clear that if in the course of the proceedings, the offence of cheating / criminal breach of trust is also made out, it is always left open to the Court to exercise its jurisdiction under Section 216 of Cr.P.C., by altering the charges. Except giving this clarity, there is no scope for interfering with the cognizance order, dated 26.05.2022.

12. The learned Counsel for the petitioners in Crl.O.P.No.20550 of 2022 requested this Court to dispense with the appearance of the first petitioner by considering his age. Taking into consideration, the facts and circumstances of the case, the presence of the first petitioner is dispensed with and he shall be represented by a Counsel, who shall cross examine the witnesses on the same day, they are examined in Chief. The first petitioner shall be present before the Court below at the time of questioning under Section 251 of Cr.P.C., questioning under Section 313 of Cr.P.C., and at the time of passing of the final judgment. Accordingly, the Court below shall



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dispose off C.C.No.137 of 2022 within a period of six months from the date of receipt of a copy of this order.

13. In the result, Crl.O.P.No.20550 of 2022 is partly allowed and the proceedings in C.C.No.137 of 2022 is quashed insofar as the second petitioner is concerned. The cognizance order passed by the Court below, dated 26.05.2022 is not liable to be interfered. However, the above clarity given by this Court regarding the alteration of charges, if required, will sufficiently safeguard the right of the complainant. Accordingly, Crl.O.P.No.18693 of 2023 stands disposed off. Consequently, connected miscellaneous petitions are closed.

13.09.2023

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
grs

To

The Judicial Magistrate,
Fast Track Court,
Alandur.



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N.ANAND VENKATESH, J.

grs

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