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Crl.O.P.Nos.18708 of 2021 etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2023

CORAM:

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

Crl.O.P.Nos.18708, 18714, 18718, 18724 & 18725 of 2021
and Crl.M.P.Nos.10276, 10277, 10279, 10280, 10281, 10283 &
10291 to 10294 of 2021

Crl.O.P.No.18708 of 2021 :-

D.Venkatesan

...Petitioner

Vs.

Balachandar

Rep. by his Power Agent

Vijayalakshmi

... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records in C.C.No.60 of 2021 on the file of the learned Judicial Magistrate No.1, Tiruvannamalai, Tiruvannamalai District, now pending on the file of the learned Judicial Magistrate (FTC), Tiruvannamalai District and quash the proceedings as against the petitioner.

Crl.O.P.No.18714 of 2021 :-

N.Dakshinamurthy

...Petitioner

Vs.

Balachandar

... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records in S.T.C.No.81 of 2016 on the



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file of the learned Judicial Magistrate No.1, Tiruvannamalai, Tiruvannamalai District, now pending on the file of the learned Judicial Magistrate (FTC), Tiruvannamalai District and quash the proceedings as against the petitioner.

Crl.O.P.No.18718 of 2021 :-

D.Arumugham

...Petitioner

Vs.

Balachandar

Rep. by his Power Agent

Vijayalakshmi

... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records in C.C.No.62 of 2021 on the file of the learned Judicial Magistrate No.1, Tiruvannamalai, Tiruvannamalai District, now pending on the file of the learned Judicial Magistrate (FTC), Tiruvannamalai District and quash the proceedings as against the petitioner.

Crl.O.P.No.18724 of 2021 :-

D.Rajalingam

...Petitioner

Vs.

Balachandar

... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records in S.T.C.No.77 of 2016 on the file of the learned Judicial Magistrate No.1, Tiruvannamalai, Tiruvannamalai District, now pending on the file of the learned Judicial Magistrate (FTC), Tiruvannamalai District and quash the proceedings as against the petitioner.



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Crl.O.P.No.18725 of 2021 :-

D.Venkatesan

...Petitioner

Vs.

Balachandar

Rep. by his Power Agent

Vijayalakshmi

... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records in C.C.No.61 of 2021 on the file of the learned Judicial Magistrate No.1, Tiruvannamalai, Tiruvannamalai District, now pending on the file of the learned Judicial Magistrate (FTC), Tiruvannamalai District and quash the proceedings as against the petitioner.

In all Crl.O.Ps.

For Petitioner : Mr.N.Nagarajan

For Respondent : Mr.S.Paneer Selvam

COMMON ORDER

These petitions have been filed to quash the proceedings in in C.C.No.60 of 2021, S.T.C.No.81 of 2016, C.C.No.62 of 2021, S.T.C.No.77 of 2016, C.C.No.61 of 2021, on the file of the learned Judicial Magistrate No.1, Tiruvannamalai, Tiruvannamalai District, now pending on the file of the learned Judicial Magistrate (FTC), Tiruvannamalai District, thereby taken cognizance for the offences under Section 138 r/w 142 of the Negotiable Instruments Act, as against the petitioner in all the petitions.



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2. The respondent/complainant in all the petitions are one and the same. The petitioners are close relatives and they are belonging to same family. The respondent filed complaint as against the petitioner in all the petitions for the offence punishable under Section 138 r/w.142 of the Negotiable Instruments Act (hereinafter referred to as “the NI Act”). Hence this Court is inclined to pass a common order.

3. In Crl.O.P.No.18724 of 2021, the respondent filed complaint in S.T.C.No.77 of 2016, alleging that during the month of November 2015, the petitioner borrowed a sum of Rs.25,00,000/- from the respondent and had issued post dated cheque dated 24.01.2016, for the said amount. The said cheque was presented for collection and the same was returned dishonoured for the reason that fund insufficient. After causing statutory notice, the respondent lodged the complaint.

4. In Crl.O.P.No.18714 of 2021, the respondent lodged complaint in S.T.C.No.81 of 2016 alleging that, in the month of December 2015, the petitioner borrowed a sum of Rs.25,00,000/- from the respondent and issued post dated cheque dated 18.02.2016 for the



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sum of Rs.25,00,000/- to the respondent. The said cheque was presented for collection and the same was returned dishonoured. After causing notice, he filed the complaint.

5. In Crl.O.P.No.18708 of 2021, the respondent lodged complaint in C.C.No.60 of 2021, alleging that the petitioner borrowed a sum of Rs.25,00,000/- from the respondent and in order to repay the said amount, he issued post dated cheque dated 22.01.2016 for the said sum. The said cheque was presented for collection and the same was returned dishonoured for the reasons that funds insufficient. After causing statutory notice, he lodged the complaint.

6. In Crl.O.P.No.18725 of 2021, the respondent lodged complaint in C.C.No.61 of 2021, alleging that the petitioner borrowed a sum of Rs.30,00,000/- from the respondent and for the said amount, he issued post dated cheque dated 01.03.2016. On instruction, the said cheque was presented for collection and the same was returned dishonoured for the reasons that funds insufficient. After causing statutory notice, he lodged the complaint.



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7. In Crl.O.P.No.18718 of 2021, the petitioner borrowed a sum of Rs.25,00,000/- from the respondent and issued post dated cheque for the said sum. The said cheque was presented for collection and the same was returned dishonoured for the reason that funds insufficient. After causing statutory notice, the respondent lodged the complaint.

8. The learned counsel appearing for the petitioners in all the petitions submitted that the petitioners are close relatives and they are belonging to same family. The respondent is a former Municipal Chairman of Tiruvannamalai Municipality. There was money transaction between the respondent and the petitioner in Crl.O.P.No.18725 of 2021. In view of the same, the respondent along with rowdy elements came to the house of the petitioners and trespassed into their house. They also threatened them with dire consequences. Immediately on 08.11.2015, the petitioner in Crl.O.P.No.18725 of 2021 lodged complaint before the Inspector of Police, East Police Station, Tiruvannamalai and on receipt of the same, he was issued with C.S.R.No.558 of 2015. However, no FIR has been registered and as such the petitioner submitted detailed



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complaint before the Superintendent of Police, Tiruvannamalai. On issuance of CSR on the petitioners' complaint, there was an enquiry.

Since the respondent is a former Chairman of the Tiruvannamalai Municipality, the concerned police officer did not register any case as against him. Therefore, they approached this Court in Crl.O.P.No.7405 of 2016 to register a case and this Court by an order dated 05.04.2016, directed the Inspector of Police, East Police Station, Tiruvannamalai, to enquire the complaint made by the petitioners and register a case if any cognizable offence is made out. Even then, no FIR has been registered. Hence, the respondent misused the cheque given by the petitioners during the money transaction between them.

9. Heard the learned counsel appearing for either side and perused the material placed before this Court.

10. The petitioner in Crl.O.P.Nos.18725 & 18708 of 2021 are one and the same. The petitioners in Crl.O.P.Nos.18718, 18724, 18725 of 2015 are the sons and the petitioner in Crl.O.P.No.18714 of 2021 is the father. In two complaints the respondent mentioned the date of



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borrowal as during November 2015 and December 2015. However, the respondent conveniently and cleverly did not state the date of borrowal in other complaints. No prudent man will lend huge money without any security. The respondent stated that during the months of November and December, 2015, the petitioners borrowed a sum of Rs. 25,00,000/- and Rs.30,00,000/- from the respondent and no security has been given, except the post dated cheques. When the enquiry pending as against the respondent, definitely he would not lend such a huge money to the petitioners, that too without any security.

11. Further on receipt of the statutory notice from the respondent, the petitioner in all the petitions categorically replied that they never borrowed any loan from the respondent and there was no loan transaction between them. It is curious to note that father and sons borrowed huge amount from the respondent that too without any security. No prudent man would lend huge amount to the same family members on the same date that too without any security. On perusal of the complaint also revealed that the respondent mechanically and simply avert in the complaint that the petitioners borrowed a sum of



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Rs.25,00,000/- or Rs.30,00,000/- for which they issued post dated cheque. Therefore the alleged cheques involved in these complaints were not issued for any legally enforceable debt, since there was no chance for borrowal of such huge amount. Therefore, the present complaints are nothing but clear abuse of process of law and it cannot be sustained as against the petitioners.

12. In view of the above discussions, the proceedings in C.C.No.60 of 2021, S.T.C.No.81 of 2016, C.C.No.62 of 2021, S.T.C.No.77 of 2016, C.C.No.61 of 2021, on the file of the learned Judicial Magistrate No.1, Tiruvannamalai, Tiruvannamalai District, now pending on the file of the learned Judicial Magistrate (FTC), Tiruvannamalai District, are hereby quashed and all the Criminal Original Petitions stand allowed. Consequently, connected miscellaneous petitions are closed.

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Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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G.K.ILANTHIRAIYAN. J.

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To

1. The Judicial Magistrate (FTC),
Tiruvannamalai District.

Crl.O.P.Nos.18708, 18714, 18718, 18724 & 18725 of 2021
and Crl.M.P.Nos.10276, 10277, 10279, 10280, 10281, 10283 &
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