



WEB COPY



Crl.O.P.Nos.22131 & 22132 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

Crl.O.P.Nos. 22131 & 22132 of 2019

and

Crl.M.P.Nos.14690, 11476, 11478 and 14691 of 2021

1. M/s. Panorama Overseas Private Limited,
Rep. by its Director,
Shahinsha Ismail Syed,
1, Silver Arch A Sector 9,
Millat Nagar,
Andheri West,
Mumbai – 400 053.

2. Shahinsha Ismail Syed,
Chairman and Managing Director,
M/s. Panorama Overseas Private Limited,
1101, Silver Arch A Sector 9,
Millat Nagar,
Andheri West,
Mumbai – 400 053.

3. Shanaz Shahnisha Syed,
Director,
M/s. Panorama Overseas Private Limited,
1101, Silver Arch A Sector 9,
Millat Nagar,
Andheri West,
Mumbai – 400 053.

...Petitioners / Accused in both Crl.O.Ps



Crl.O.P.Nos.22131 & 22132 of 2019

-Vs-

R. Deenadayalan
Proprietor, Shree Fashions,
Door No.12/1, 12/2, Appavoo Nagar,
Dharma Nagar, 5th Street,
Suramangalam, Salem – 636 005.
Tamil Nadu

... Respondent / Complainant in both Crl.O.Ps

Common Prayer: Criminal Original petitions filed under Section 482 of Code of Criminal Procedure, to call for the records relating to Proceedings in STC. Nos. 1602 and 1603 of 2018 the file of the Judicial Magistrate Court - II, Salem and to quash the same.

For Petitioners : Mr. K. Sridhar, in both Crl.O.Ps

For Respondent : Mr. B. Satish Sundar,
in both Crl.O.Ps

COMMON ORDER

These Criminal Original Petitions have been filed seeking to quash the proceedings in S.T.C Nos.1602 and 1603 of 2018 on the file of the Judicial Magistrate Court – II, Salem, filed for the alleged offences under Section 138 read with Section 142 of Negotiable Instruments Act, 1881 (Amended).



CrI.O.P.Nos.22131 & 22132 of 2019

2.It is alleged in the complaint that the petitioners had issued four cheques each for Rs.10,00,000/- towards the discharge of their liability to the respondent / complainant and when the said cheques were presented for collection, it was returned with an endorsement “Funds Insufficient” and the petitioners had not made payment inspite of the statutory notice.

3.Mr. K. Sridhar, learned counsel for the petitioner would submit that the complaint is misconceived and admittedly, the petitioners are not liable to pay a sum of Rs.40,00,000/- to the defacto complainant and there is no privity of contract between the defacto complainant and the petitioners; that there is endorsement in the backside of the cheques, which says that 'not to be deposited only for security purpose'. The learned further submitted that the Hon'ble Supreme Court in the judgment reported in **2022 LiveLaw (SC) 830, Dashrathbhai Trikambhai Patel V. Hitesh Mahendrabhai Patel & Anr.**, had stated that when a part of a sum due under the cheque is paid, it must be endorsed on the cheque as prescribed under Section 56 of the Act and the cheque must be negotiated only for the balance amount. In view of the admitted fact, that only a sum of Rs.31,00,000/- is due to the respondent,



CrI.O.P.Nos.22131 & 22132 of 2019

the impugned complaint is not sustainable, as there is a false averment made in the complaint. The respondent ought not to have presented all the four cheques for collection.

4.The learned counsel for the respondent, per contra, submitted that the question as to whether the cheque was issued only for security purpose or can be encashed is the matter has to be adjudicated before the trial Court. There were transactions between the petitioners and the respondent and the cheques were issued only to secure those transactions. The very object of handing over the cheque as security is to encash it, if there is a non-payment or when the payment becomes due to the respondent. In any case, this cannot be canvased in the quash petition. The learned counsel further submitted that the judgment of the Hon'ble Supreme Court reported in reported in **2022 LiveLaw (SC) 830, Dashrathbhai Trikambhai Patel V. Hitesh Mahendrabhai Patel & Anr.**, was rendered after the trial and not in a quash petition. That apart, in the instant case, it is not one single cheque for Rs.40,00,000/- and there were four different cheques and hence it is for the trial Court to consider, as to the liability in respect of each of the cheques and adjudicate the issue.



CrI.O.P.Nos.22131 & 22132 of 2019

WEB COPY

5. On hearing the learned counsels on either side, this Court finds that the question as to whether there is privity of contract between the petitioners and the respondent has to be adjudicated only before the trial Court. The question as to whether the cheques were issued in discharge of liability or for security purposes has also to be adjudicated only before the trial Court. There is a presumption of Section 139 of the Negotiable Instruments Act and the said presumption cannot be dislodged by way of pleadings or submissions in a quash petition. It is open to the petitioners to raise the points raised here that the cheques ought not to have been presented, that there is no privity of contract that a substantial portion of the due amount was paid and; that the respondent had erroneously presented all the cheques and made a false complaint. Hence this Court is not inclined to entertain the quash petitions insofar as petitioners 1 and 2 are concerned. The trial Court may consider the points without being influenced by any of the observations made in this order.



CrI.O.P.Nos.22131 & 22132 of 2019

6.As regards the 3rd petitioner, there is absolutely no allegation that she was in-charge and responsible for the conduct of the business of the 1st accused company except for the vague statement that the 3rd petitioner is also a Director. Admittedly, the cheques was signed by the 2nd petitioner and this Court holds that the complaint does not satisfy the ingredient of Section 141 of the Act, in order to prosecute the 3rd petitioner and hence this Court is inclined to quash the impugned proceedings as against the 3rd petitioner alone.

7.With the above observations, these Criminal Original Petitions are partly allowed. Consequently, connected Criminal Miscellaneous Petitions are closed.

8.The personal appearance of the 2nd petitioner before the trial Court in S.T.C.Nos.1602 and 1603 of 2018 is dispensed with, unless the learned Judicial Magistrate – II, Salem, considers his presence necessary for the progress of the trial.



CrI.O.P.Nos.22131 & 22132 of 2019

9.Since the case is pending from the year 2019, the learned Judicial Magistrate – II, Salem, may conclude the trial as expeditiously as possible.

28.06.2023

smv

Index : Yes/No

Speaking order : Yes / No

Neutral Citation : Yes / No

To,

1.The Judicial Magistrate - II, Salem.

2.The Public Prosecutor,
High Court of Madras.



WEB COPY



CrI.O.P.Nos.22131 & 22132 of 2019

SUNDER MOHAN,J.
smv

CrI.O.P.Nos. 22131 and 22132 of 2019

28.06.2023