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Crl.O.P.Nos.23588 & 24727 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2023

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THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.Nos.23588 & 24727 of 2019

and

Crl.M.P.Nos.12424, 12425, 13154 & 13156 of 2019

1.Arputham Ammal Amirthavalli Modern Rice Mill
Rep. By its Partners
K.Balarama Chakravarthy & M.Dinesh
No.579/7 & 598/5 at No.73,
Thanigai Polur Village & Post,
Arakkonam Taluk,
Vellore District

2. K.Balarama Chakravarthy

... Petitioners
[in both Crl.OPs]

Vs.

Nagabooshanam

... Respondent
[in Crl.OP.No.23588]

Gopi

... Respondent
[in Crl.OP.No.24727]

PRAYER in Crl.O.P.No.23588/2019: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code to call for records relating to C.C.No.46/2016 on the file of the JM, Arakkonam and quash the entire proceedings against the petitioners.



Crl.O.P.Nos.23588 & 24727 of 2019

For Petitioners : M/s.Arun Dhanapalan

For Respondents : Mr.E.Kannadasan

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PRAYER in Crl.O.P.No.24727/2019: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code to call for the relevant records relating to S,T.C.No.57/2016 on the file of the learned Judicial Magistrate, No.1, Fast Track Court, Tiruvallur and quash the entire proceedings against the petitioners.

For Petitioners : M/s.Arun Dhanapalan

For Respondents : Mr.E.Kannadasan

COMMON ORDER

These petitions are to quash the private complaint filed under Section 138 of the Negotiable Instruments Act.

2. It is alleged in the complaint that towards discharge of liability to the complainant, the 1st accused firm had issued a cheque which was signed by the 3rd accused for a sum of Rs.2,50,000/- and when the said cheque was presented for collection, it was returned for the reason 'funds insufficient' and in spite of the statutory notice, the 1st accused firm did not make the payment and hence the accused were liable for the aforesaid offence.



3.(a). The learned counsel for the petitioners would confine his submissions in respect of the 2nd petitioner alone. He would submit that the cheque was issued from the account of the 1st accused firm. As per the letter issued by the Bank dated 21.01.2019, it is seen that the current account maintained by the 1st accused firm has to be jointly operated by accused No.2 (2nd petitioner) and accused No.3. However, since the cheque was signed only by the 3rd accused, the impugned complaint is not maintainable against the 2nd accused.

3.(b). The learned counsel relied upon the judgement of the Hon'ble Supreme Court reported in **(2013) 8 SCC 71 - Aparna A.Shah Vs. Sheth Developers Pvt. Ltd. and another** and also the judgement of this Court in **Crl.OP (MD)No.16051/2011 - Jeenath Nisha Vs.G.Senthil Kumar and Anothers** in support of his submission that in case of issuance of a cheque from a joint account, a joint account holder who had not signed the cheque cannot be prosecuted.



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4. The learned counsel for the respondent on the other hand submitted that the cheque was issued towards the discharge of a liability. The complaint is that the 1st accused firm is liable to pay the cheque amount. The cheque was returned for the reason "funds insufficient" and not for the reason that both the signatories have not signed the cheques. Hence, he prayed for dismissal of these quash petitions.

5. This Court on perusal of the impugned complaints finds that admittedly the cheque was issued by the 1st accused partnership firm. According to the petitioners, the account has to be operated by two persons namely A.2 and A.3 jointly and that since A.2 had not signed the cheque, he would not be liable for the offence under Section 138 of the NI Act. The petitioners relied upon the letter dated 21.01.2019 sent by the Chief Manager, Canara Bank to the petitioners to substantiate their case.



6. This Court is of the view that since the cheque was returned for the reason 'funds insufficient' and not because both the signatories have not signed the cheque, the question as to whether the 2nd petitioner is liable has to be adjudicated only before the Trial Court. The letter of the Canara Bank relied upon by the petitioners has to be marked and proved before the Trial Court. The judgments relied upon by the learned counsel for the petitioners namely, *Aparna A.Shah Vs. Sheth Developers Pvt. Ltd. and another*, where it was held that a joint account holder who is not a signatory to the cheque cannot be prosecuted under Section 138 of the NI Act would not be applicable to the facts of the instant case since the cheque here was issued by the partnership firm.

7. As regards the judgment relied upon by the learned counsel for the petitioners, in *Crl.OP (MD)No.16051/2011 - Jeenath Nisha Vs.G.Senthil Kumar and Anothers* passed by this Court based on the judgement of the Hon'ble Supreme Court, this Court is of the view that the question as to whether the account was operated jointly or not has to be adjudicated only before the Trial Court and hence that judgement would not come to the aid



of the petitioners. Hence, this Court is not inclined to entertain these quash petitions. However, the petitioners can raise all the points before the Trial Court.

8. With the above observations, this Criminal Original Petitions are dismissed. Consequently, connected Criminal Miscellaneous Petitions are closed.

9. The learned Magistrate may conduct the trial as expeditiously as possible and preferably complete it within a period of 3 months from the date of receipt of a copy of this order.

10. The personal appearance of the 2nd petitioner before the Trial Court is dispensed with, unless the learned Magistrate deems his presence necessary for the progress of the Trial.

28.06.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
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To,

1. The JM, Arakkonam.

2. The Judicial Magistrate, No.1, Fast Track Court, Tiruvallur.



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SUNDER MOHAN. J,

shr

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