



*Crl.O.P.No.24063 of 2019
and CRL.MP.No.12771 of 2019*

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2023

CORAM:

THE HONOURABLE Ms.JUSTICE **R.N.MANJULA**

Crl.O.P.No.24063 of 2019
and
CRL.MP.No.12771 of 2019

1. M/s.Rifah Shoes (P) Ltd.,
Represented by its Managing Director
Mr.C.Suhail Ahmed,
BSR Elysium, Flat A,
865, Poonamalee High Road,
Kilpauk, Chennai-600 010.
2. A.Shaaz Ahmed
Authorised Signatory
M/s.Rifah Shoes (P) Ltd.,
BSR Elysium, Flat A,
865, Poonamalee High Road,
Kilpauk, Chennai-600 010.

...Petitioners

-Vs-

V.Md.Imran
Proprietor
M/s.Uswa Shoes,
No.108/2, 108/3, Tower Road,
Tuthipet-635 811 (Vellore District).

... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, praying to call for the records in STC.No.99 of 2019



*Crl.O.P.No.24063 of 2019
and CRL.MP.No.12771 of 2019*

dated 11.07.2019 on the file of Additional District Munsif cum Judicial Magistrate, Ambur (Vellore District) and quash the same.

For Petitioners : Mr.K.M.Aasim Shehzad

For Respondent : Mr.N.P.Kumar

ORDER

This Criminal Original Petition has been filed to call for the records in STC.No.99 of 2019 on the file of the learned Additional District Munsif-cum-Judicial Magistrate, Ambur, Vellore District and quash the same.

2. The petitioners are the Company and its authorised signatory, who are arrayed as accused 1 and 2. The present complaint has been given on the allegation of dishonor of cheque.

3. Heard the learned counsel for the petitioners and the learned counsel for the respondent. Perused the entire materials available on record.

4. The learned counsel for the petitioners submitted that the case has been filed by suppressing the material fact that the amount involved in the case have already been paid; the respondent himself have executed



*Crl.O.P.No.24063 of 2019
and CRL.MP.No.12771 of 2019*

acknowledgment and undertaken to return the cheque; despite having received the consideration borne by the cheque, the respondent has filed a criminal complaint; the petitioners had given reply notice and in reply notice itself, they have stated about the settlement process and the manner in which the amount involved in the cheque have already been paid; the respondent, who had failed to make due endorsement in the cheque with regard to the payment made had taken advantage and presented the cheque for collection; without stating all these facts, the complaint has been filed and hence, it is not maintainable; the petitioners' Bank Account will also reflect the transaction made towards part repayment of the cheque amount. In support of his arguments, the learned counsel for the petitioners cited the following judgments:-

1. ***Sureshkumar Metha Vs. Addison and Co., Ltd.***, reported in ***MANU/TN/9960/2007***
2. ***Dashrathbhai Trikambhai Patel Vs. Hitesh Mahendrabhai Patel & Anr*** reported in ***2022 LiveLaw (SC) 830***.



*Crl.O.P.No.24063 of 2019
and CRL.MP.No.12771 of 2019*

WEB COPY

5. The learned counsel for the respondent submitted that the alleged payment made by the petitioners does not relate to the impugned cheque and the petitioners had taken advantage of some other payments and claimed that the cheque amount has already been discharged. Whatever may be the case, it is a matter to be proved before the Court and the petition cannot be quashed at the threshold stage.

6. On perusal of the complaint, it is stated that the complaint has been made with regard to the alleged dishonour of cheque bearing Nos.205598 & 205599. Those cheques have been issued for a sum of Rs.12.00 lakhs and Rs.13.00 lakhs respectively.

7. The learned counsel for the petitioner submitted that even on 05.02.2019 itself the respondent had sent a communication that he would undertake to surrender those cheques to him the next day. In the letter dated 05.02.2019, there is a mention about the cheque number, the Bank in which the cheques were drawn and the amount for which the cheques were issued. However, the learned counsel for the respondent submitted that the alleged payment do not relate to the impugned cheques.



*Crl.O.P.No.24063 of 2019
and CRL.MP.No.12771 of 2019*

WEB COPY

8. It is seen from the reply notice of the petitioner that the above facts were stated. But only if the parties are subjected to trial, the genuineness of the signature and the execution of the letter dated 05.02.2019 and related acknowledgment can be proved. Though the petitioners appears to have a valid defence to disprove the case of the complainant, such factual aspects cannot be touched upon by this Court, while invoking powers under Section 482 Cr.P.C. No doubt a complaint has been presented by suppressing material facts which is illegal and the bearer of the cheques has got a duty to make an endorsement in the cheque itself for receiving part payment towards the cheque amount. But these facts do not appear on the face of the complaint, which was filed before the trial Court.

9. At this juncture, I can only observe that the petitioner can put forth the points which he had made before this Court as his defence before the trial Court and make use of those materials as his rebuttal proof. Since the Court cannot make a roving enquiry at the threshold stage and the complaint filed the petitioner discloses the *prima facie* case, the learned trial Judge has taken the case on file. Without allowing the parties to present their evidence and



*Crl.O.P.No.24063 of 2019
and CRL.MP.No.12771 of 2019*

WEB COPY

supporting materials, the learned trial Judge cannot come to any conclusion about the binding nature of the impugned cheques.

10. With the above observations, this Criminal Original petition is disposed of. Taking into consideration of the long pendency of the case, the learned Additional District Munsif cum Judicial Magistrate, Ambur, Vellore District is directed to dispose of STC.No.99 of 2019 as expeditiously as possible. In the light of the defence taken by the petitioners, I feel it is appropriate to dispense the appearance of the petitioners unless it is specifically mandatory by the Trial Court. Consequently, connected Miscellaneous petition is also closed.

23.01.2023

Index : Yes/No

Speaking/Non Speaking order

Neutral Citation Case: Yes/No

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To

1. The Additional District Munsif-cum-Judicial Magistrate,
Ambur, Vellore District.



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*Crl.O.P.No.24063 of 2019
and CRL.MP.No.12771 of 2019*

R.N.MANJULA, J

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Crl.O.P.No.24063 of 2019
and CRL.MP.No.12771 of 2019

23.01.2023