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Crl.O.P.No.28578 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2023

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.28578 of 2022 and
Crl.M.P.Nos.17542 & 17543 of 2022

1.M/s.Foiler Technology Pvt Ltd.,
Rep by N.S.Baskar.

2.N.S.Baskar @ Baskar Nadathoor,
S/o.Santhanam,
Both at 28, 6th Floor, B Block,
114, Sri Theagaraya Road,
T.Nagar,
Chennai – 600 017.

... Petitioners

Vs.

M/s Vanilla Holdings & Investments Pvt Ltd.,
Rep by Shunmuga Kumar M,
New No.8, Old No.25, D.P.Nagar,
Second Street, Kotturpuram,
Chennai – 600 085.

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in S.T.C.No.695 of 2021, on the file of the Learned XII Small Causes Court, Chennai and quash the same.

For Petitioners : Mr.W.C.Camyles Gandhi

For Respondent : Mr.S.Ramesh



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ORDER

The petitioner, who is an accused in a proceedings under Section 138 of the Negotiable Instruments Act, 1881 initiated by the respondent in C.C.No.3260 of 2018, has filed this Quash Petition.

2.Learned counsel for the petitioners submitted that the 2nd petitioner made investment in shares with the respondent/complainant. During investments, the 2nd petitioner gave cheque as security purpose, which has been misused by the respondent/complainant and a case has been foisted against him. He further referring to the loan agreement (Ex.P2) that Clauses 8, 9 & 11 are in favour of the petitioner, which would clearly demolish and cut the root of the case of the respondent about any liability for the cheque given to him. He further submitted that in the evidence of PW1, who is the Manager/Legal Representative of the respondent company, he admits that he is not privy to the contract and business between the petitioner and the respondent. He further admits that the respondent is in the business of equity fund and short term loan and there is a memorandum of understanding entered between the petitioner and the respondent. PW1 in his evidence nowhere whispers



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any liability to the cheque in question. He further submitted that the 2nd petitioner is of 67 years old and he is suffering from age related ailments. On this score, the petitioner had put forth his case to quash the proceedings against him.

3.Learned counsel appearing for the respondent submitted that the petitioner has not brought the entire facts before this Court. The petitioner took loan on 19.05.2017 in Ex.P2, which is confirmed from the Clauses 3 and 4, wherein it is seen that the petitioner issued six cheques for the interest amount and all these six cheques have been honoured. The cheque before the trial Court is for the principal amount, which got dishonoured. These six cheques have been referred, which are given for interest. This interest amount has been paid, but the principal amount of Rs.2 Crores have not been paid, for which, the cheque has been issued which got dishonoured. He further referred to the Email of the petitioner admitting his loan amount. He further submitted that the points raised by the petitioners are disputed and are factual in nature, which has to be decided only during trial. By filing this petition, the petitioner stalled the progress of the trial. In this case, the cheque is of the year 2017 and the



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case filed before the trial Court in the year 2018, now more than five years lapsed, but a case under Section 138 of the Negotiable Instruments Act, 1881 is yet to reach its logical conclusion. Hence, prayed for dismissal of this Quash Petition. He further submits that now, C.C.No.3260 of 2018 has been transferred to the file of the XII Small Causes Court, Chennai and renumbered as S.T.C.No.659 of 2021.

4.This Court considered the rival submissions and perused the materials available on record.

5.The trial is commenced and PW1 examined in chief and he was cross examined in detail by the petitioner. The petitioner put forth his defence by referring to the documents and also to the transactions between them. Now, the case is at the penultimate stage, at this stage, this Court cannot go into the disputed facts.

6.In view of the above, this Court does not find any merits in this Petition. Hence, this Criminal Original Petition stands dismissed.



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7.On the contention of the learned counsel for the petitioner that the petitioner is an aged person, the petitioner can file a petition under Section 317 Cr.P.C., and the same can be liberally considered by the trial Court.

8.It is made clear that the observations are made herein is only for the purpose of disposing this Criminal Original Petition. The trial Court uninfluenced with the above order of this Court shall decide the case on its own merits in accordance with law. Consequently, the connected Miscellaneous Petitions are closed.

20.06.2023

Index: Yes/No
Internet: Yes/No
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To

1.The XII Small Causes Court,
Chennai.

2.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.
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