



Crl.O.P.No.24188 of 2023
& Crl.M.P.Nos.16849 & 16851 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.11.2023

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

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& Crl.M.P.Nos.16849 & 16851 of 2023

O D Thomas, M/A 53,
S/o.Devassia,
Olicka House, Vikas Nagar,
Kalpetta, Vythiri TK,
Wayanad District, Kerala State. ... Petitioner/Accused

/versus/

1. The State Rep. by Inspector of Police,
Mecheri Police Station,
Salem District.
Crime No.21 of 2023. ... Respondent/Complainant
2. Madhesan. ... Respondent/Defacto complainant

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., pleased to call for the records pertaining to the proceedings in C.C.No.175 of 2023 on the file of the Judicial Magistrate at Mettur, Salem District and quash the same.



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For Petitioner : Mr.P.V.Balasubramaniam, Senior Counsel
for Mr.G.Jaisivaramaraj

For R1 : Mr.S.Udaya Kumar.
Govt. Advocate (Crl.Side)

For R2 : Mr.R.C.Paul Kanagaraj

ORDER

This Criminal Original Petition is filed to quash the C.C.No.175 of 2023, on the file of Judicial Magistrate-II, Mettur, Salem, pending against the petitioner O.D.Thomas, for alleged offence under Section 379 of I.P.C.

2. The short point involved in this case is that, the petitioner and one Madhesan/defacto complainant had business contract regarding Quarry, Crusher, M-Sand, P-Sand and in the course of the transaction, it is alleged that, a cheque for sum of Rs.19,50,000/-, dated 20.11.2021 was given to the petitioner herein to discharge the debt. When the cheque was presented for collection, same was honoured and another cheque for sum of Rs.18,42,156/- was also honoured but when the third cheque for Rs.40,00,000/- presented, it was returned as account closed. Hence, a complaint under Section 138 of N.I.Act been filed before

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the Chief Judicial Magistrate, Kalpetta, Kerala, in S.T.C.No.17 of 2023 and S.T.C.No.18 of 2023 as against the 2nd respondent Madhesan, for Rs.40 lakhs each and same is pending. While so, the 2nd respondent has filed the criminal complaint before the Mecheri Police station alleging that, the cheque leaves were stolen by the petitioner herein. The said complaint is sought to be quashed on the ground that, it is an afterthought to counterblast the proceedings initiated under Section 138 of N.I. Act.

3. Pending disposal, the parties have arrived at settlement and memorandum of understanding is filed before this Court stating that the parties will withdraw their respective case namely in C.C.No.175 of 2023, pending on the file of Judicial Magistrate-II Mettur, Salem, initiated on the complaint given by the 2nd respondent and S.T.C.No.17 of 2023 and S.T.C.No.18 of 2023, on the file of Chief Judicial Magistrate, Kalpetta, Kerala District.

4. The petitioner as well as 2nd respondent/defacto complainant are present, the Memorandum of Understanding signed by them was filed by the Learned Counsels. The Learned Counsel for the petitioner undertakes to withdraw



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the criminal complaint in S.T.C.No.17 of 2023 and S.T.C.No.18 of 2023, on the file of Chief Judicial Magistrate, Kalpetta, Kerala District. The Learned Counsel for the 2nd respondent has no objection to quash the C.C.No.175 of 2023, pending on the file of Judicial Magistrate-II, Mettur. The Memorandum of Understanding reads as below:-

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is made and entered into at Chennai on this 1st day of November 2023.

Between

Mr.MATHESAN, aged 55 years, Son of Kandhasamy, Aadhar No.(4922-4879-4160) No.3/5,306 Thuttampatty, Kattu Valavu, Omalur Post, Salem District, Tamil Nadu, Inhabitant of Salem, which expression shall unless repugnant to the context or the meaning thereof be deemed to be include his heirs, executors, successors, administrators and assigns, herein after referred to as the party of the FIRST PART;

AND

Mr.O.D.Thomas, aged 55 years, Son late Shri Devasla Olickal, Aadhar No. (8633-5288-8815) Olickal House, P.O Kalpetta, Wayanad, Kerala 673121, which expression shall unless repugnant to the context or the meaning thereof be deemed to be his heirs, executors, successors, administrators and assigns, herein after referred to as the party of the party of the SECOND PART;

The Party of the First Part and Party of the Second Part together referred to as "Parties" and individually referred to as a "Party"



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WHEREAS:-

The Party of the First Part and the Party of Second Part entered into a lease agreement dated 17.05.2019 whereby the Party of the First Part allowed the Party of the Second Part for running of the crusher named 'Sri Velan Blue Metal', Arasamarathupudur, Salem District for the period of 41 months and the Party of the Second Party has paid a refundable deposit to the Party of the First Part as per the terms of the Lease deed.

AND WHEREAS The lease agreement was prematurely terminated due to difference between the party of the First Part and party of the Second Part.

AND WHEREAS Due to the misunderstanding the Party of the Second Part filed criminal complaints bearing S.T.C. No. 17 of 2023 & S.T.C. No.18 of 2023 U/s 138 of NI Act for dishonour of the cheques for sum of Rs.80,00,000/-before the Ld. Chief J against the Party of the First Part Judicial Magistrate Court at Kalpetta against the Party of the First Part.

AND WHEREAS Due to misunderstanding, the Party of the First Part had filed a complaint in CRL MP No. 4227 of 2022, in the Court of the Judicial Magistrate II, Mettur, Salem District police to take action in respect his written information. The learned seeking direction to the Mecheri Judicial Magistrate II, Mettur, had given direction to the Mecheri police to investigate the case in accordance with law. In pursuance of this, Crime No.21 of 2023 was registered on the file of the Inspector of Police, Mecheri police and the final report was file and the case was taken on file and registered as CC.No 175 of 2023 on the file of Judicial Magistrate II, Mettur thereafter Ld Judicial Magistrate II, Mettur took cognizance and issued process/summons against the Party of



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the Second Part U/s 379 of the IPC and subsequently issued the Non Bailable Warrant against the Party of the Second Part. However during the pendency of the said Complaint, the parties herein have entered into an amicable settlement/resolution of the dispute's and accordingly both the parties herein have agreed to enter into and executed the present Memorandum of Understanding.

The Parties hereto have agreed to record the settlement term in the following manner;

**NOW IT IS HEREBY AGREED BY AND BETWEEN
THE PARTIES HERETO AS UNDER**

1. The Party of the First Part now based on the compromise entered into between the parties complaint pending before the "Judicial Magistrate No.II, Mettur, agrees to withdraw the said Criminal At Salem, Tamil Nadu", Complaint bearing No.CC.175/2023 in Crime No.21 of 2023 & he shall join & support petition bearing No. CRL OP/24188/2023 filed u/s 482 of the CrPC pending before the Hon'ble High Court of Judicature at Madras which has filed by the Party of the Second Part in order to quash the aforesaid criminal complaint with free consent as all the disputes between the parties are amicably resolved up to the satisfaction of the Parties herein.

2. Subject to the adherence of the Clause No.1 by the Party of the First Party, the Party of the Second Part has agreed withdraw criminal complaints bearing S.T.C. No. 17 of 2023 & S.T.C. No.18 of 2023 U/s 138 of NI Act for dishonor of the cheques for sum of Rs.80,00,000/-before the Learned. Chief Judicial Magistrate Court at Kalpetta against the Party of the First Part with free consent as all the disputes between the parties are amicably resolved up to the satisfaction of the Parties.



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3. The Party of the First Part and Party of the Second Part will file necessary applications before the abovementioned courts for withdrawal of cases against each other and both the parties herewith agree to fully co-operate till its disposal.

4. The Both parties agreed that full and final settlement of all issues/disputes between them and that there is no amount payable by each other.

5. The Party of the Second Part hereby agrees that this Memorandum of understanding supersedes all the correspondences, letters, agreements, receipts or any other documents in respects of lease agreement dated 17.5.2019 and any other agreement or understanding executed or agreed in between the Parties.

6. It is hereby agreed between the parties hereto that they have executed this MOU voluntarily and without any threat or coercion.

7. It is hereby agreed between the parties hereto that their respective successors, heirs are also bound and liable to the terms of the present understanding.

IN WITNESS WHEREOF the Parties hereto set and subscribed their respective hands and seal on the day and year first hereinabove written.

SIGNED, SEALED AND DELIVERED by the within named
Mr. Mathesan, Kandhasamy

SIGNED, SEALED AND DELIVERED by the within named
Mr. O D Thomas in the presence of Witnessess



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5. The Learned Government Advocate (Crl.Side) for the 1st respondent states that, the offence under Section 138 of N.I. Act is a compoundable offence under the statute. The case which is pending before the Judicial Magistrate - II, Mettur, Salem is for the alleged offence under Section 379 of I.P.C. The punishment prescribed for the said offence is for a term which may extend upto three years, or with fine, or with both. It is a cognizable, non-bailable compoundable offence triable by the Magistrate.

6. In the light of the above fact, the Memorandum of Understanding filed by the petitioner and the 2nd respondent is taken on record. The petition to quash is allowed in terms of the Memorandum of Understanding. Accordingly, this ***Criminal Original Petition is disposed of.*** Consequently, connected Miscellaneous Petitions are closed.

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Index :Yes/No.
Internet :Yes/No.
Speaking Order/Non-Speaking Order
bsm

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Copy to:-

1. The Judicial Magistrate at Mettur, Salem District.
2. The Inspector of Police, Mecheri Police Station, Salem District.
3. The Public Prosecutor, High Court, Madras.



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DR.G.JAYACHANDRAN, J.

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