



WEB COPY



Crl.O.P.No.32301 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P. No. 32301 of 2019

and

Crl.M.P. No. 17760 & 17761 of 2019

1.R.Sudhakar

2.Usharani

... Petitioners

Vs.

R.Kavitha

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records of the case pending in C.C.No.221 of 2019 on the file of the learned Judicial Magistrate, Fast Track Court, at Thiruvannamalai and quash the same.

For Petitioners : Mr. S.Silambu Selvan
for Mr. B.S.Ramesh

For Respondent : Mr. R.Venkata Subban
M/s. Sarvabhauman Associates.



WEB COPY



Crl.O.P.No.32301 of 2019

ORDER

The petition is to quash the private complaint for the offences under Section 138 of the Negotiable Instruments Act, 1881 read with Section 420 of IPC.

2. It is alleged in the complaint that the respondent had supplied goods to the 1st accused to the value of Rs.36,65,161/-; that the 1st accused had paid only a sum of Rs.18,86,000/- out of the said amount; that the petitioners along with the 1st accused had promised to pay the balance amount of a sum of Rs.17,79,161/-; that the 1st accused had issued two cheques for a sum of Rs.8,50,000/- and Rs.9,47,161/- respectively, towards discharge of the said liability. It is further alleged in the complaint that when the said cheques were presented for collection of money, the cheques were returned for the reason '*account closed*'; that the petitioners are liable for the offence under Section 420 IPC along with the 1st accused because they undertook to pay the



balance amount due by the 1st accused to the respondent.

WEB COPY

3. (i). The learned counsel for the petitioners would submit that the impugned complaint as against the petitioners is not maintainable. Admittedly, the cheques were issued by the 1st accused and the petitioners have nothing to do with the account held by the 1st accused. Hence, the petitioners are not liable for the offence under Section 138 of the Negotiable Instruments Act.

(ii). The learned counsel would submit that as regards offence under Section 420 of IPC, it is seen that from the allegation is that the respondent had supplied goods worth Rs.36,65,161/- to the 1st accused and the 1st accused paid only a portion of the said amount. Even accepting the said allegations to be true, the petitioners cannot be held liable for the offence under section 420 of IPC for promising the respondent that they would guarantee the payment of balance money by the 1st accused. The petitioners are therefore not liable for the offence under section 420 of IPC.



WEB COPY

4. The learned counsel for the respondent would submit that though the petitioners may not be liable for the offence under Section 138 of the Negotiable Instruments Act, they would be liable for the offence under Section 420 of IPC since they had given written undertaking that they would ensure that the 1st accused pays the amount due to the respondent. The cheques issued by the 1st accused were returned for the reason '*account closed*'. Therefore, the petitioners who had guaranteed the payment of balance money by the 1st accused to the respondent are liable for the offence under Section 420 of IPC.

5. This Court on perusal of the impugned complaint finds that this is the case of commercial transaction between the 1st accused and the respondent. Admittedly, the respondent had supplied goods to the 1st accused and the 1st accused had paid only a portion of the amount due by him to the respondent. As regards the balance payment, the 1st accused had issued two cheques, which were dis-honoured for the reason '*account closed*'. The only allegation against the petitioners is



that they had guaranteed the due repayment by the 1st accused to the respondent. It is also seen that there is a dispute with regard to the quality of the goods. On the basis of the allegation of the complaint, it is clear that the petitioners cannot be prosecuted for the offence under Section 138 of the Negotiable Instruments Act. The facts reveal that the petitioners have not deceived the complainant in any manner so as to attract the offence of Section 420 of IPC. Merely because the petitioners had undertaken to make payment by the 1st accused, they cannot be held liable for the offence under Section 420 of IPC. The act of the petitioners at best would amount to breach of promise. Hence, this Court is inclined to quash the complaint, in so far as the petitioners alone are concerned.

6. In the result, the petition is allowed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

7. The learned Judicial Magistrate, Fast Tract Court at Thiruvannamalai, is directed to conduct the Trial in respect of the 1st



Crl.O.P.No.32301 of 2019

accused as expeditiously as possible and complete the same preferably within a period of 6 months from the date of receipt of a copy of this order .

17.04.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation :Yes/No
kan

To

The Judicial Magistrate,
Fast Tract Court,
Thiruvannamalai.



WEB COPY



Crl.O.P.No.32301 of 2019

SUNDER MOHAN. J,

kan

CrI.O.P.No. 32301 of 2019

17.04.2023