IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.11.2023

PRONOUNCED ON : 18.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.Nos. 30501 of 2018 & 2690 of 2019
and
Crl.M.P.Nos. 17965 of 2018 & 1723 of 2019

1. M/s.Jyothimaye Estate,
Rep. by its Partner Brahmanandam Danda
No.2/7, Amman Koil Street,
Mehta Nagar, Aminjikarai,
Chennai – 600 029.

2. Brahmanandam Danda
Partner,
M/s.Jyothimaye Estate.

3. J.Sekar @ Sekar Reddy,
Partner
M/s.Jyothimaye Estate ... Petitioners in both Crl.O.Ps

Vs

J.Jayaprakash ... Respondent in Crl.O.P.No.30501 of 2018

B.Ramamoorthy ... Respondent in Crl.O.P.No.2690 of 2019

COMMON PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in the complaint filed by the respondents in C.C.Nos.656 & 658 of 2018 on the file of the Judicial Magistrate No.III at Vellore and quash the same as against the petitioners.

For Petitioners	:	Mr.A.L.Somayaji Senior Counsel for Mr.S.Sai Sathyajith (in Crl.O.P.No. 30501 of 2018) for M/s.AAV Partners (in Crl.O.P.No.2690 of 2019)
For Respondent	:	Mr.P.C.Harikumar for M/s.P.C.Harikumar & Associates (in both Crl.O.Ps)

COMMON ORDER

These Criminal Original Petitions have been filed to quash the proceedings in C.C.Nos.656 & 658 of 2018 on the file of the Judicial Magistrate No.III, Vellore.

2. In both cases, the petitioners are accused in the complaints lodged by the respondents for the offence punishable under Section 138 of Negotiable Instruments Act. The respondents in both the petitions filed complaints alleging that they are lessees of the immovable property situated at Block No.3, Revenue Ward No.1 of Vada Vellore Village, Katpadi Taluk, Vellore District, comprised in T.S.No.178 admeasuring to an extent of 1 acres 55 cents, T.S.No.175 admeasuring to an extent of 5 acres 21 cents, T.S.No.58,

admeasuring to an extent of 1 acre 44 cents, T.S.No.172 admeasuring to an extent of 34 cents and T.S.No.173 admeasuring to an extent of 66 cents, in total 8 acres 11 cents, owned by one V.Sundararajan and his family members. They let out the said property in their favour by a Lease Deed dated 09.08.2010. The said property was let out for the purpose of running scooter stand or any other purpose as desired by them. They were put in possession and they are in possession till now. When the lease deed was subsisting, the lessor had intended to sell the property to an extent of 7 acres 10 cents out of 8 acres 11 cents to the respondent in Crl.O.P.No.2690 of 2019. The total sale consideration was fixed at Rs.30,88,50,000/-. They had entered into an agreement for sale on 18.10.2010. On the date of agreement, a sum of Rs.2 crores was paid as advance and the remaining sale consideration was payable as per the terms and conditions of the agreement for sale. In the agreement for sale itself, handing over of possession of the properties has been acknowledged by the lessor. After execution of the agreement for sale, the Government of Tamil Nadu had proposed to acquire the subject land for construction of bus stand. Therefore, none of the purchasers came forward to purchase the said land, as a result of which, he could not mobilise the funds. Therefore, they had mutually extended the time for performing the sale agreement.

3. In the meanwhile, there were family disputes among the family members of the vendor, in which one group of persons filed a partition suit in respect of the very same property in O.S.No.42 of 2007 and another group of persons also filed a suit for injunction not to deal with the property covered under the agreement for sale dated 18.10.2010 in O.S.No.272 of 2008. Thereafter, the Government of Tamil Nadu proposed to drop the acquisition proceedings in respect of the subject property. The respondents had spent huge money for issuance of Government Order in G.O.Ms.No.49 dated 31.05.2012 to drop the acquisition proceedings in respect of the subject property. As per the Government Order, there will be no acquisition of the subject property. In the month of February 2014, one of the Ministers of Tamil Nadu introduced the second accused to the respondents as an investor, who has agreed to invest Rs.30 crores to conclude the sale agreement dated 18.10.2010. However, the second accused demanded twice the amount of investment i.e., 60 crores, which shall be payable only after selling the said property by the respondents. As a security for the investment made by the second accused, it was demanded that the sale deed has to be executed in favour of the new Company, which is going to be floated by the second accused. He has agreed to execute a separate agreement for the said purpose of returning the said amount to the second accused.

4. The respondents agreed that the second accused can invest the amount and purchase the subject property. The said sale deed is only sham and nominal and it is not supported by any transfer of possession and it was agreed that the actual physical possession of the subject property continues to be vested with the respondents. Accordingly, the second respondent had invested a sum of Rs.30 crores and the same was paid to the vendors of the sale agreement dated 18.10.2010. In turn, the respondents had executed three distinct sale deeds in favour of the first accused floated by the second accused on 14.03.2014 by the original owner of the property viz., the investor. On the same day, they had also executed the sale agreement in favour of the respondents that they are selling the very same land for a sale consideration of Rs.60 crores. However, the physical possession of the subject property continuously vests with the respondents. As per the agreement, the respondents have to obtain building sanction plan from the appropriate authorities and they have given power to develop the subject property. As per the terms and conditions of the agreement dated 14.03.2014, the respondents have to sell the property within a reasonable time. Thereafter, they settled the said sum of Rs.60 crores to the first accused and only after getting an approval of the building sanction plan. Accordingly, the respondents had obtained sanction plan by spending huge amount for 1,77,000 sq.ft. out of 3,00,850

sq.ft. After the sanction plan was approved by the local Town Planning Authority, Vellore and it was forwarded to the Director of Town and Country Planning, Chennai, who in turn, forwarded the same to the Secretary to Government of Tamil Nadu, Muncipal Administration Water Supply, Chennai-9, to accord the final building sanction plan. After the influence of the fourth accused, the file was cleared from the Secretariat Department and permission was accorded on 10.12.2015, for which the respondents had spent huge amount.

5. Thereafter, the Gift Deed has to be executed in favour of the local authority. The accused had agreed to execute the Gift Deed on 04.01.2016. However, they postponed the registration of the Gift Deed for the reason that the fourth accused is not interested in executing the Gift Deed. Therefore, the respondents were unable to get the buyers to sell the subject property. It was brought to the knowledge of the accused, at that juncture, the fourth accused expressed his desire that he will take the entire property by settling all the share holders including the respondents. In order to settle the share of the respondents for their leasehold rights as per the Lease Deed dated 09.08.2010 and the expenses were incurred for getting G.O.Ms.No.49, obtaining the sanction plan and several other works done by the respondents

demanded a sum of Rs.100 crores from the accused. Finally, it was reduced and finalized for Rs.65 crores. Accordingly, the fourth accused had agreed to settle the said amount. At that juncture, the Enforcement Department conducted a raid in the residence of the fourth accused and seized the money. He was arrested and subsequently, he was released on bail on condition that he shall stay at New Delhi. After relaxation of the condition, he came to Chennai and after several round of discussions and negotiations, the fourth accused had agreed to settle the amount of Rs.65 crores in two parts, i.e., Rs.19 crores to be settled by way of cheque and the remaining amount of Rs.46 crores by way of cash at the time of handing over the actual physical possession of the subject property to the accused by the respondents. This proposal was duly accepted and agreed by the respondents and the accused had entered into a Memorandum of Understanding on 22.09.2017. The said Memorandum of Understanding was restricted in respect of payment by cheque alone.

6. On the date of Memorandum of Understanding, a sum of Rs.2.50 crores was paid to the respondents. As per the Memorandum of Understanding, the accused agreed to pay the balance amount within a period of one month. However, they had paid only a sum of Rs.6.50 crores on various dates upto December, 2017. In the mean while, the political parties attempted

to take the physical possession of the subject property. However, it was failed and as instructed by them, the accused created and fabricated documents, in order to dispossess the respondents from the subject property. They had prepared documents and forcibly obtained signatures from the respondents and the documents signed are back dated documents. They also assured that they will settle the entire amount as per the Memorandum of Understanding dated 22.09.2017. After signing the said documents, the accused issued post dated cheque bearing 287664 dated 07.08.2018 for a sum of Rs.3,20,00,000/- and also issued another cheque bearing No. 287663 for the very same date for a sum of 2,70,00,000/- drawn on AXIS Bank, Anna Nagar Branch, Chennai, in favour of the respondents. Both the cheques were presented for collection and the same were returned with an endorsement "Payment Stopped by the Drawer". The respondents issued statutory notice on 03.09.2018. The notice was returned with an endorsement "Left". Thereafter, the respondents filed complaint for the offence punishable under Section 138 of Negotiable Instruments Act read with Sections 141 & 142 of the Negotiable Instruments Act.

7. The learned Senior Counsel appearing for the petitioners submitted that there was no legally enforceable debt for issuance of cheques

that too for such a huge amount. That apart, both the cheques were returned with an endorsement "payment stopped by the drawer". He also produced statement of accounts to show that when the cheques were presented for collection, a sum of Rs.12,50,00,000/- was very much available in the account. In fact, the respondents filed a petition not to harass before this Court and also to take appropriate action on the complaint dated 27.02.2016. Both the writ petition and the direction petition were dismissed by this Court by a common order dated 22.06.2020. He further submitted that the petitioners issued notice dated 19.07.2018, thereby requested the respondents not to present the cheques, for the reason that they had not done any work as per the terms and conditions of development agreement. Further he submitted that the entire Memorandum of Understanding is illegal one and the cheques were not issued for any legally enforceable debt. Even according to the respondents, the petitioners agreed to settle the amount to the tune of Rs.65 crores for the work done by the respondents such as getting Government Order in G.O.Ms.No.49, getting approval from the authorities concerned and other development charges.

8. Per contra, the learned counsel appearing for the respondents would submit that when the cheques were dishonoured with the reason of

"stop payment instructions" by virtue of Section 139 of the Negotiable Instruments Act, the Court has to presume that the cheques were received by the holder for the discharge in whole or in part, of any debt or other liablity. Therefore, the instructions of the stop payment issued to the banker could be sufficient to make the accused liable for offence under Section 138 of Negotiable Instruments Act. Even assuming that the petitioners stopped payment on good cause, it has to be rebutted only before the Trial Court, by producing evidence. It cannot be decided before this Court and it can be considered only before the Trial Court by let in evidence. The petitioners did not deny their signature and issuance of cheques. The cheques were issued only on the basis of Memorandum of Understanding dated 22.09.2017. Whatever the development done by the respondents and the amount spent for obtaining Government Order, planning approval and sanction, they agreed to settle the said amount to the respondents as per the Memorandum of Understanding dated 22.09.2017. Therefore, both the cheques were issued for legally enforceable debt. Though the petitioners maintained their account with cheque amount only in order to cheat the respondents issued stop payment instructinsand thereby dishonoured the cheques.

9. He further submitted that Section 139 introduces an exception to the general rule as to the burden of proof and shifts the onus on the accused. The presumption under Section 139 of the Negotiable Instruments Act is a presumption of law, as distinguished from presumption of facts. Presumptions are rules of evidence and do not conflict with the presumption of innocence, which requires the prosecution to prove the case against the accused beyond reasonable doubt. The obligation on the prosecution may be discharged with the help of presumptions of law and presumptions of fact unless the accused adduces evidence showing the reasonable possibility of the non-existence of the presumed facts. Therefore, the grounds raised by the petitioners cannot be considered by this Court and it can be rebutted only before the Trial Court.

10. He also submitted that this is not a stage of evaluating the truthfulness or otherwise of the allegations levelled by the complaintant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused are. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the complainant, it would be impermissible to discharge the accused before trial. Further the complaint filed under Section 138 of Negotiable Instruments ought to have been quashed on the ground that there are intestate dispute

between the parties. Therefore, they are liable to be punished for the offence under Section 138 of Negotiable Instruments Act.

11. In support of his contention he relied upon the various Judgments of the Hon'ble Supreme Court of India, which are as follows :

(i) 2002(1) SCC 234 – in the case of MMTC Ltd and another Vs. Medchal Chemicals & Pharma Pvt.Ltd., and another.

(ii) 2009 (2) SCC 513 – in the case of Kumar Export Vs. Sharma Carpet.

(iii) 2013 (3) SCC 330 – in the case of Rajiv Thapar and others Vs. Madanlal Kapoor.

(iv) 2015 (11) SCC 776 – in the case of HMT Watches Ltd., Vs. M.A.Abuda and another

(v) 2018 (8) SCC 165 – in the case of Kishen Rao Vs.Shankar Gouda.

(vi) 2019 (4) SCC 197 – in the case of Bir Singh Vs. Mukesh Kumar.

(v) Criminal Appeal No.1545 of 2019 – in the case of Uttam Ram Vs. Devinder Singh and Another.

(vi) Criminal Appeal No.849-850 of 2011 – in the case of Thiyambak S. Hedge Vs.Sripad

(vii) 2020 (3) SCC 794 – in the case of Rajesh Bhai Mulji Bai Patel and another Vs. State of Gujarat and another

(viii) Criminal Appeal No.694-695 of 2022 – in the case of Ratish Babu Unnikrishnan Vs. State of Government of NCT of Delhi and another

(ix) Criminal Appeal No. 741 of 2022 – in the case of Jagmohan Singh Vs. Vimlesh Kumar and another

(x) Criminal Appeal No.770 of 2022 – in the case of Satish Kumar Jatav Vs. State of U.P. And others

(xi) Criminal M.C.No.1751 of 2022 – in the case of Malvinder Mohan Singh Vs. Enforcement Directorate and another.

12. Heard the learned counsel appearing on either side and perused the materials available on record.

13. The petitioners are arrayed as A1,A2 & A4. The first accused is a partnership firm and others are partners of the first accused. The points arise for consideration in these two petitions are that

(i) Whether the cheques were issued for any legally enforceable debt.

(ii) Whether the petitioners are liable to be punishable under Section 138 of the Negotiable Instruments Act, when they had stopped payment and maintaining their account with the cheque amount.

14. The petitioners had purchased the subject property by a registered Sale Deed dated 14.03.2014 vide document Nos.3154, 3155 and 3156 of 2014. The respondents were entered into an agreement for lease with the original owner of the property on 18.10.2010. Subsequently, the said property was purchased by the petitioners. However, according to the respondents, they are in possession of the subject property. They were entrusted with the works i.e., to remove the unauthorised encroachments, trespassers, demolishing old buildings therein, removing debris and rubbish, levelling the land, making permanent compound wall and all other incidental activities. Without even completing the said work fully and effectively, they deceived the petitioners and received a sum of Rs.13 crores. Therefore, the petitioners are decided to initiate proceedings to recover the said amount from the respondents.

15. On perusal of the entire complaint as narrated above, the respondents stated so many stories which involves politicians and Government officials. According to them, in order to drop the land acquisition proceedings, which was proposed to acquire the subject land for the purpose of construction of new bus stand, they had spent huge money. Thereafter, the Government passed G.O.Ms.No.49, thereby declared there will be no acquisition of the

subject property. As per the Memorandum of Understanding dated 22.09.2017, the alleged cheques were issued to the respondents for a sum of Rs.2,70,00,000/- and Rs.3,20,00,000/- by way of two cheques dated 07.08.2018. As per the agreement dated 14.03.2014 entered between the petitioners and the respondents, the respondents had taken possession of the subject property for cleaning and obtaining sanction for construction. Therefore, they agreed to pay a sum of Rs.19 crores to develope and construction purpose in respect of the subject property in favour of the respondents and issued cheques towards part payment. However, after issuance of cheques, the petitioners issued legal notice dated 19.07.2018, thereby called upon the respondents not to present the cheques and refund a sum of Rs.3,50,00,000/- after retaining a sum of Rs.3,50,00,000/- within a period of three days for the reason that they played fraud and cheated the petitioners.

16. The relevant portion of the notice dated 19.07.2018, which is reads as follows :

> *"5. Our client states that thereafter falsely representing that you have completed the work, you submitted your bills in reference 001 and 001 both dated 05.06.2017 making a claim*

from the total payment of Rs. 10,00,00,000/- (Rupees Ten Crores Only) towards the work which you claimed to have done.

6. Our Clients relying upon your representation had already made a payment of 4,00,00,000/- (Rupees Four Crores Only) and trusting your words, they released the balance sum of Rs. 6,00,00,000/- (Six Crores Only) after deducting the TDS amounts, as follows:

(i) A sum of Rs.2,70,00,000/- (Rupees Two Crores and Seventy Lakhs Only), vide Cheque bearing No.287663 dated 07.08.2018, drawn on Axis Bank Ltd., Anna Nagar, Chennai in favour of Mr.B.Ramamoorthy.

(ii) A sum of Rs. 3,20,00,000/- (Rupees Three Crores and Twenty Lakhs Only), vide Cheque bearing No.287664 dated 07.08.2018, drawn on Axis Bank Ltd., Anna Nagar, Chennal in favour of Mr.J.Jayaprakash.

7. Our Client states that you successfully played fraud and cheated our Clients. You dishonestly induced our client to hand over their hard earned money to you. Our Client states that their shock and surprise, they found that the work as represented and promised by you had not been carried at all. The very little work which had been done at the site also was done with lowest quality materials and the work was not executed in proper form. In fact, the work done by you has lowered and brought down the value of the property belonging to out client.

8. Our Client states that they had informed you immediately regarding the inferior quality of work done on your part and also that most of the work had not been carried out at all despite having taken money for the same.

9. Our Client states that your act amounts to cheating, criminal breach of trust, playing fraud upon our client and causing wrongful loss to them. You have also been purposefully evading our client after receiving the payments from our client. Our client had no option but to issue stop payment notice to the bank for protecting their lawful rights as you have been successful in cheating and causing huge loss to them all this while.

10.Our Client states that though sufficient amount is available in their respective account for clearance of the aforesaid cheques, however they are not due any amount to you and in fact it is both of you, who have to return their money. The work done by you even if evaluated by any standards will not be of a value more than Rs. 50,00,000/- (Rupees Fifty Lakhs Only) and you are liable to refund the balance sum to our client. Our clients hereby reserve their liberty to approach crime branch for prosecuting you for various offences.

Under the circumstances our Client hereby calls upon you not to bank the cheques bearing Numbers 287663 and 287664, both dated 07.08.2018 drawn on Axis Bank Ltd, Anna Nagar, Chennai for a sum of Rs. 2,70,00,000/- and Rs.3,20,00,000/- respectively Only) and refund a sum of

Rs.3,50,00,000/- (Rupees Three Crores and Fifty Lakhs only) after retaining a sum of Rs.50,00,000/- towards the work done by you, within 3 days from the date of receipt of this notice, failing which our client will be constrained to initiate appropriate civil and criminal proceedings against you in the appropriate forum and you will be held responsible for the costs and consequences arising thereof."

17. The relevant portion of the reply notice dated 03.10.2018, which reads as follows :

7. Our clients state that thereafter falsely representing that your client and Mr. B.Ramamoorthy have completed the work and submitted their respective bills in reference Nos.001 and 001 both dated 05.06.2017 making a claim for the total payment of Rs. 10,00,00,000/- (Rupees Ten Crores Only) towards the work which your client and Mr. B.Ramamoorthy claimed to have done and handed over the site to our clients.

8. Our Clients state that relying upon the representation of your client and Mr. B.Ramamoorthy had already made a payment of Rs.4,00,00,000/- (Rupees Four Crores Only) and trusting their words, our clients released the balance sum of Rs. 6,00,00,000/- (Rupees Six Crores Only) after deducting the TDS amounts, as follows:

i. A sum of Rs.2,70,00,000/- (Rupees Two Crores and Seventy Lakhs Only), vide Cheque bearing No.287663 dated 07.08.2018, drawn on Axis Bank Ltd., Anna Nagar, Chennai in favour of Mr.B.Ramamoorthy.

ii. A sum of Rs. 3,20,00,000/- (Rupees Three Crores and Twenty Lakhs Only), vide Cheque bearing No.287664 dated 07.08.2018, drawn on Axis Bank Ltd., Anna Nagar, Chennai in favour of Mr.J.Jayaprakash i.e., your client.

9. Our Clients state that your client and Mr. B.Ramamoorthy successfully played fraud and cheated our Clients. Your client and Mr. B.Ramamoorthy dishonestly induced our clients to hand over their hard earned money to your client and Mr. B.Ramamoorthy. Our Clients state that to their shock and surprise, they found that the work as represented and promised by your client and Mr. B.Ramamoorthy had not been carried at all in the site. Only the very little work which had been done at the site also was done with lowest quality materials and the work was not executed in proper form. In fact, the work done by your client and Mr. B.Ramamoorthy have lowered and brought down the value of the property belonging to our clients.

10. Our Clients state that they had informed your client and Mr. B.Ramamoorthy immediately regarding the inferior quality of work done by them and also that most of the work *had not been carried out at all despite having taken money for the same from our clients.*

11. Our Clients state that act of your client and Mr. B.Ramamoorthy amounts to cheating, criminal breach of trust, playing fraud upon our clients and causing wrongful loss to them. Your client and Mr. B.Ramamoorthy have also been purposefully evading our clients after receiving the payments from our clients, Our clients states that despite sufficient balance in their bank account, they had no option but to issue stop payment notice to the bank for protecting their lawful rights as your client and Mr. B.Ramamoorthy have been successful in cheating and causing huge loss to them all this while and hence they were given stop payment notice and had also communicated the same to your client and Mr. B.Ramamoorthy on 19.07.2018.

18. It is clear that they dishonestly induced the petitioners to hand over their hard earned money to them. Only a very little work, which has been done at the site and also the same was done with lowest quality materials. The entire work was not executed in proper form. It would amounts to cheating, criminal breach of trust, playing fraud upon the petitioners and causing wrongful loss to them. The petitioners also had sent a stop payment letter to their banker and had also communicated the same to the respondents on

19.07.2018. After the said notice dated 19.07.2018, both the cheques were presented for collection by the respondents on 07.08.2018. Both the cheques were returned for the reason "payment stopped by the drawer". Thereafter, the respondents caused statutory notice. On receipt of the said notice, the petitioners had sent a detailed reply notice dated 03.10.2018.

19. On perusal of the reply notice sent by the petitioners revealed that the respondents played fraud by cheating, criminal breach of trust and caused wrongful loss to them. They dishonestly induced the petitioners to hand over their hard earned money. They never dealt in any cash transactions and do not have the policy of doing any cash transactions. A sum of Rs.46 crores was never agreed to be paid by them and it is absolutely false, frivolous and baseless. There is no reason to give such a huge amount to the respondents. They also subsequently contended that neither the proceedings under Section 138 of Negotiable Instruments Act is maintainable as there is no legally enforceable debt due to the respondents and the stop payment of cheque was clearly informed in advance to the respondents despite there being sufficient amount in their bank accounts. Therefore, the alleged cheques were not issued for any legally enforceable debt. In fact, the petitioners also taking steps to file a suit for recovery of Rs.50 crores as damages against the

respondents and also intended to file a complaint for the offence punishable under Section 499 of IPC.

20. Admittedly, the respondents presented the cheques after receipt of notice by the petitioners dated 19.07.2018, thereby called upon the respondents not to present the cheques and also issued stop payment notice to their banker. Therefore, both the cheques were returned for the reason "payment stopped by the drawer". The petitioners also produced their statement of accounts for the period from 01.08.2018 to 31.08.2018. The alleged cheques were presented for collection on 07.08.2018. From 04.08.2018 to 13.08.2018, the petitioners were maintained their accounts with a sum of Rs.6,10,34,400.96. Therefore, the cheques were returned not for the reason "fund insufficient". The cheques were returned only for the reason "payment stopped by the drawer" and on the date of presentation of the cheque, the petitioners had sufficient amount to honour the cheques. Hence, the offence under Section 138 of Negotiable Instruments Act is not at all attracted as against the petitioners. That apart, on perusal of the entire complaint, the respondents indulged in illegal activities such as, bribe to the officials in order to get Government order to drop the land acquisition proceedings in respect of the subject property. They also given bribe to the

officials to obtain santion plan for put up construction. Therefore, they indulged in illegal activities and entered into a Memorandum of Understanding dated 12.02.2017.

21. Even according to the respondents they had spent huge amount in obtaining the Government order, sanctioned plan and other expenses thereto. The petitioners agreed to pay a sum of Rs.65 crores. Therefore, the said Memorandum of Understanding itself is illegal one and it cannot be executable. Even assuming that as per the Memorandum of Understanding, both the cheques were issued by the petitioners, subsequently, the payments were stopped by the petitioners for the reason stated supra. On the date of presentation of the cheques, the petitioners maintained their account with balance of Rs.6,10,03,400.96/- .

22. On the strength of the Memorandum of Understanding, the respondents lodged complaint and there was no action and as such, they had filed writ petition in W.P.No.29183 of 2018 for direction directing the Secretary, Legislative Assembly and the Chief Government Whip, Tamil Nadu Legislative Assembly to take appropriate action as against the petitioners and others. This Court, by an order dated 22.06.2020, observed as follows :

“5. On perusal of the closure report, is seen that the petitioners' complaint was enquired and closed as civil in nature. The petitioner was also directed to approach trial Court, since already civil suit is pending in O.S.No.603 of 2018, on the file of the Sub Court Vellore. On perusal of the closure repert further revealed that the petitioner repeatedly submitted the complaints in respect of the very same issue. On the enquiry, petitioner was in possession and enjoyment of the property which measuring 7 acres and 10 cents and running partnership firm in the name and style of Sai City Centre. In fact, the petitioners also filed direction-petition before this Court in Cr1.O.1290 of 2019 for transfer of investigation to CBI and the same was disposed on 21.01.2019. Once again the petitioners filed another petition in Crl.O.P.No.10280 of 2019 for registration of complaint dated 14.03.2019. Again this Court by an order dated 16.04.2019 dismissed the same with direction to follow the guideline issued by the Hon'ble Division Bench of this Court. Therefore, the petitioners without following guideline issued by the Hon ble Division Bench of this Court now filed this writ petition. It is nothing but clear abuse of process of Court. Further on the complaint detailed enquiry was conducted and the same was closed and the closure report was also served to the petitioners herein. Therefore, this writ petition devoid of merits and liable to be dismissed.

6. In view of the above discussion, this Writ Petition is dismissed. No order as to costs. Consequently, miscellaneous petition is closed."

23. That apart on the complaint lodged as against the respondents, they filed a petition in Crl.O.P.No.30367 of 2018 for direction directing the Superintendent of Police and Inspector of Police, not to harass them, in which, this Court by an order dated 22.06.2020, dismissed the petition for the reason that on the complaint, they registered an FIR in Crime No.500 of 2018 for the offences under Sections 406 and 506(i) of IPC. After completion of investigation, they filed final report and the same has been taken cognizance in C.C.No.548 of 2019 on the file of the Judicial Magistrate No.IV, Vellore. In another complaint, FIR has been registered in Crime No.946 of 2018 and it is pending investigation as against the respondents and others and therefore, not to harass does not arise and the same was dismissed by this Court.

24. The learned counsel for the respondents would submit that the petitioners did not deny their signature and issuance of cheque. It is true that once the cheque has been drawn and issued to the payee and the payee has presented the cheque and thereafter, if any instructions are issued to the bank for non-payment and the cheques are returned to the payee with such an

endorsement, it amounts to dishonour of cheque and it comes within the meaning of Section 138 of Negotiable Instruments Act. After issuance of the cheque to the payee to the holder in due course and before it is presented for encashment, notice is issued to him not to present the same for encashment and yet the payee or holder in due course presents the cheques to the bank for payment and when it is returned on instructions, Section 138 of Negotiable Instruments Act does not get attracted.

25. It is relevant to extract the provisions under Section 138 of Negotiable Instruments Act, which reads as follows :

> *"138. Dishonour of cheque for insufficiency, etc. of funds in the account – Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an arrangement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the*

cheque, or with both :

Provided that nothing contained in this section shall apply unless-

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier.

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid ; and

(c) the drawer of the such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due curse of the cheque within fifteen days of the receipt of the said notice.

Explanation : For the purposes of this section, 'debt or other liability' means a legally enforceable debt or other liability".

26. Thus, dishonour of cheques simpliciter for the reasons stated in Section 138 of the Negotiable Instruments Act is sufficient for commission of offence since the presumption of law on this point is no longer res integra, the category of "stop-payment" instruction to the bank where the account holder has sufficient funds in his account to discharge the debt for which the

cheque was issued, the said category of cases would be subject to rebuttal as this question being rebuttable, the accused can show that the stop-payment instructions were not issued because of insufficiency or paucity of funds, but stop payment instruction had been issued to the bank for other valid causes including the reason that there was no exisiting debt or liability in view of bonafide dispute between the drawer and drawee of the cheque. If that be so, then offence under Section 138 would not be made out. Further after issuance of cheque and before instructions to deposit the cheques, the petitioners caused notice on 19.07.2018 and thereby instructed not to present the cheques for collection. Even then, the respondents presented the cheques for collection which got dishonoured. The petitioners also duly informed to their banker not to honour the cheques. Even then, the respondents had presented the cheques and got dishonoured and initiated the proceedings under Section 138 of Negotiable Instruments Act. Therefore, the offence punishable under Section 138 of Negotiable Instruments Act is not attracted as against the petitioners and the impugned proceedings are liable to be quashed.

27. In view of the above discussions, the impugned proceedings in C.C.Nos.656 & 658 of 2018 on the file of the Judicial Magistrate No.III at Vellore, are hereby quashed. Accordingly, both Criminal Original Petitions are

allowed. Consequently, connected miscellaneous petitions are closed.

18.12.2023

Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order
Lpp

To

The Judicial Magistrate No.III,
Vellore.

G.K.ILANTHIRAIYAN, J.

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Crl.O.P.Nos. 30501 of 2018 & 2690 of 2019
and
Crl.M.P.Nos. 17965 of 2018 & 1723 of 2019

18.12.2023