



Crl.OP.(MD).No.4453 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**Reserved on :
25.09.2023**

**Pronounced on :
23.11.2023**

CORAM :

THE HONOURABLE MR.JUSTICE P.DHANABAL

Crl.OP.(MD).No.4453 of 2019

1.S.P.S.Muthuramalingam

2.Premalatha

.. Petitioners

VS

1.State through:
Inspector of Police,
District Crime Branch,
Madurai.
Crime No.1/11

R.Paramasivan (Died)

2.R.P.Radhakrishnan

(R2 impleaded as per order of this Court
dated 10.09.2020 in Crl.MP.(MD).No.4509/2020
in Crl.OP.(MD).No.4453 of 2019) .. Respondents

This Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records relating to the proceedings in C.C.No.80 of 2018 on the file of Judicial Magistrate No.



Crl.OP.(MD).No.4453 of 2019

1, Madurai and quash the same as against the petitioners/Accused No.1 and 2.

For Petitioners : Mr.G.Mariappan

For Respondents
(R1) : Mr.M.Sakthi Kumar
Government Advocate
(Criminal Side)

(R2) : Mr.R.Rajamohan

ORDER

This petition has been filed by the petitioners to quash the proceedings in C.C.No.80 of 2018 on the file of the Judicial Magistrate No.1, Madurai and to pass such further or other orders as the Hon'ble Court deems fit and proper in the circumstances of the case.

2. According to the petitioners, the 2nd respondent had given complaint as against the petitioners and based on the complaint, the first respondent had registered F.I.R. in Crime No.1 of 2011 for the offences under Sections 406 and 420 of I.P.C. After registration of F.I.R, the first respondent had investigated the case and filed final report and the same



Crl.OP.(MD).No.4453 of 2019

was taken on cognizance by the Judicial Magistrate No.1, Madurai under Sections 408, 406 read with Section 34 of I.P.C.

3. The prosecution case is that the defacto complainant was running a Firm, by name M/s.Paramasivam & Sons and carrying out contractual works in the Gas Supply Business at Madurai, Tuticorin and Chennai. The first petitioner/first Accused had approached the 2nd respondent / defacto complainant for a job and he was also appointed as Supervisor for Madurai Unit from the year 1995 to 2005. The first petitioner/first Accused was entrusted with Banking operations of the Firm and there was a dispute pending between the first petitioner and the 2nd respondent with regard to the settlement of salary and further, there was a motive between the parties due to the non-submission of Provident Fund forms for first petitioner/Accused No.1. During 21.06.2010, the 2nd petitioner/2nd Accused had sent a notice under Section 138 of the Negotiable Instruments Act as if the second petitioner presented a Cheque for collection for a sum of Rs.3,00,000/- and the same was returned. In fact, the accused have misused the cheque from 243000 to 243100 and a particular cheque bearing No.24305 was misused by the



Crl.OP.(MD).No.4453 of 2019

Accused and the proceedings under Section 138 of Negotiable Instruments Act was initiated against him. The accused have committed criminal breach of trust by misusing the above said cheque and filed the cheque complaint, thereby the complaint was lodged by the 2nd respondent before the first respondent.

4. In fact, the 2nd respondent company borrowed a sum of Rs. 3,00,000/- from the second accused/second petitioner and to settle the above said amount, the cheque was issued by one of the partner of the company and then the cheque was presented for collection and returned as “insufficient funds” and then the case was filed before the Judicial Magistrate No.1, Virudhunagar in S.T.C.No.900 of 2010 and the trial Court has convicted the accused and thereafter, the accused preferred appeal before the Additional District and Sessions Judge, Virudhunagar in Criminal Appeal No.1 of 2014. The Appellate Court has acquitted the accused by reversing the judgment of the trial Court. As against the acquittal, the 2nd petitioner has preferred an appeal before this Court and the same is pending. The defacto complainant has not chosen to take any action against the petitioners till the filing of complaint under Section



Crl.OP.(MD).No.4453 of 2019

138 of the Negotiable Instruments Act and even as per FIR and charge sheet, no ingredients to attract the provisions under Sections 408, 406 read with 34 IPC and there are no *prima facie* materials available to proceed with the case and the pending proceedings in C.C.No.80 of 2018 on the file of the Judicial Magistrate No.1, Madurai are clear abuse of process of law. Therefore, the above said proceedings are liable to be quashed.

5. No counter was filed by the respondents.

6. The learned counsel appearing for the petitioners would contend that the 2nd respondent lodged a complaint before the first respondent as against these petitioners, alleging that the first petitioner was working under the second respondent's company namely M/s.Paramasivam and Sons and he was looking after the Bank transactions of the company and thereby he was dealing with the cheque book and other account transactions. At that time, he misused the cheque of the defacto complainant and filled the cheque in the name of the second petitioner and filed a cheque complaint before the Judicial Magistrate No.1,



Crl.OP.(MD).No.4453 of 2019

Virudhunagar. Based on the above said complaint, the first respondent registered F.I.R in Crime No.1 of 2011 for the offences under Section 406 & 420 of I.P.C and thereafter the first respondent without conducting proper investigation, filed final report as against these petitioners for the offences under Sections 408, 406 read with Section 34 of I.P.C. In fact, the accused borrowed a sum of Rs.3,00,000/- from the second petitioner and to settle the above said amount, the disputed cheque was issued for a sum of Rs.3,00,000/-. When the cheque was presented for collection, it was returned and thereby cheque complaint was lodged by the 2nd petitioner as against the 2nd respondent and others and the same was ended in favour of the second petitioner and the second respondent and others were convicted by the trial Court. In the appeal, the trial Court judgment was reversed and the 2nd respondent herein was acquitted. As against the judgment of Appellate Court, the 2nd petitioner has preferred a Criminal Appeal in Crl.A.No.308 of 2018 before the Madurai Bench of Madras High Court and the same is also pending. While so, the 2nd respondent has given false complaint against the petitioners. Therefore, the pending proceedings as against the petitioners is clear abuse of process of law. While pending proceedings, the 2nd respondent died and



Crl.OP.(MD).No.4453 of 2019

his son was impleaded as a party to the proceedings as 3rd respondent.

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7. The learned counsel appearing for the 3rd respondent would contend that these petitioners were arrayed as Accused in Crime No.1 of 2011. In fact, the first petitioner was working under the 2nd respondent partnership firm namely M/s.Paramasivam and Sons as Accountant and his prime duty is to look after the accounts and the Bank dealings and thereby he was concerned with the cheques and other accounts of the company. Thereafter, the first accused/first petitioner resigned the job from the second respondent company. At that time, the accounts were not settled by him and he also misused the cheque book of the company. Among the cheques, one of the cheque was filled up in the name of the 2nd petitioner, who is the wife of the first petitioner and the same was misused and then he filed the cheque complaint based on that cheque. Thereby the father of the 3rd respondent i.e., 2nd respondent gave a complaint for the criminal breach of trust committed by the accused. Based on the said complaint, the first respondent registered a case in Crime No.1 of 2011 and the case was elaborately investigated by the first respondent and then the first respondent filed final report. Now, the case



CrI.OP.(MD).No.4453 of 2019

is pending for further proceedings. As per the final report, there are *prima facie* material available to proceed with the case as against the accused and at this stage, the petitioners have to face the trial since the offences are grave in nature.

7.1. Already based on the above said cheque, second petitioner (A2) has filed complaint before the Judicial Magistrate No.1, Virudhunagar, whereby the accused were convicted by the trial Court. As against the conviction and judgment, the accused have preferred an appeal before the Additional District and Sessions Court, Virudhunagar. The Appellate Court has reversed the judgment of the trial Court and acquitted the accused. Now the offences charged against the accused are borne out of records and thereby it needs elaborate trial and at this stage, this petition is not maintainable and the same is liable to be dismissed.

8. This Court heard both sides and perused the records.

9. The petitioner's contention is that the 2nd respondent on behalf of his company, borrowed a loan of Rs.3,00,000/- and to discharge the



Crl.OP.(MD).No.4453 of 2019

said loan, one of the partner of the company issued a cheque on behalf of the company and thereby the 2nd respondent filed a cheque case in S.T.C.No.900 of 2010 before the Judicial Magistrate No.1, Virudhunagar. While so, the 2nd respondent herein filed a false complaint against these petitioners that the first accused misused the cheque. While he was working under the 2nd respondent's company and based on the complaint, the present case has been registered and now the case is pending before the Judicial Magistrate No.1, Virudhunagar.

10. The contention of the 2nd respondent is that the first accused is working under the 2nd respondent's company as Accountant and he only looked after the accounts of the company and he was authorized to deal with the Bank transactions. While so, he misused the cheques of the company and by filling up one of the cheque, he filed cheque case through his wife and thereby the 2nd respondent lodged a complaint and based on the complaint, the Police registered F.I.R and the case was investigated and filed final report and the case is now pending before the trial Court.



Crl.OP.(MD).No.4453 of 2019

11. At this juncture, the petitioners/ accused have filed this Criminal Original Petition to quash the pending C.C. proceedings before the Judicial Magistrate No.1, Virudhunagar. In this case, it is an admitted fact that the cheque case was filed by the 2nd accused as against the 2nd respondent and others. The cheque case was initially ended in favour of the defacto complainant and the trial Court has convicted the accused under Section 138 of the Negotiable Instruments Act and the accused preferred appeal and in the appeal, the judgment of the trial Court was reversed and the accused were acquitted from the charges.

12. In the present case, the 2nd respondent has preferred a complaint, stating that the first accused at the time of working under the 2nd respondent's company, misused the cheque and filed cheque complaint. The case was elaborately investigated by the Investigating Agency i.e., the first respondent and as per the final report, there are *prima facie* material available as against the accused. The trial Court also has taken cognizance after perusing the entire records. Further, the petitioners have not raised a valid ground to quash the proceedings and their only contention is that in the cheque case, the accused were



Crl.OP.(MD).No.4453 of 2019

convicted. But the Appellate Court has acquitted the accused and the appeal is also pending before this Court.

13. It is an admitted fact that the first accused was working under the second respondent company and he was entrusted with the Bank work and at that time, he dealt with the cheques of the company. Therefore, the present case requires elaborate trial and without trial, the case cannot be decided.

14. Since the prosecution agency has conducted elaborate investigation and there are *prima facie* material available to proceed with the case further, at this stage, this Court also cannot test the veracity of the statement of the witnesses and the documents collected through the prosecution agency. Therefore, the petitioners have to face the trial before the trial Court.

15. In view of the above said discussions, this Court is of an opinion that this petition has no merits and deserves to be dismissed.



Crl.OP.(MD).No.4453 of 2019

16. In the result, this Criminal Original Petition is dismissed. No costs.

23.11.2023

Index:Yes/No

Neutral Citation:Yes/No

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To

- 1.The Judicial Magistrate No.1,
Madurai.
- 2.The Inspector of Police,
District Crime Branch, Madurai.



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Crl.OP.(MD).No.4453 of 2019

P.DHANABAL, J.

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Pre-Delivery order made in
Crl.OP.(MD).No.4453 of 2019

23.11.2023