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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date of Reservation : 21/06/2023

Date of Pronouncement : 20/07/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.OP(MD)No.4336 of 2023

and

Crl.MP(MD)No.3830 of 2023

1.K.Balasubramaniam
2.K.Kutti @ Bharathiraja
3.K.Karupagamani
4.A.Karuppan @ Karuppasamy
5.Valliammal
6.Samuthiraraj : Petitioners/A1 to A6

Vs.

1.P.Mahalakshmi
2.Minor P.Madhubala
3.Minor P.Haribala
4.Minor P.Illavarasu : Respondents/Complainants
(R2 to R4 are represented by
by their mother 1st respondent)

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records pertaining to CC No.95 of 2021 on the file of the Judicial Magistrate No.II, Sivakasi and quash the same and pass such further or other orders.

For Petitioners : Mr.K.Rajeshwaran

For Respondents : Mrs.P.Mahalakshmi
(Party-in-person)

**ORDER**

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This criminal original petition has been filed seeking quashment of the case in CC No.95 of 2021 on the file of the Judicial Magistrate No.II, Sivakasi.

2.The facts in brief:-

The 1st respondent herein filed a private complaint before the trial court namely the Judicial Magistrate No.1, Sivakasi, with the following allegations:-

The first petitioner and the first respondent are husband and wife. For the purpose of making repair and renovation of the house in Door No.6/53, the complainant arranged loan amount of Rs.50,000/- from her father. At that time, the original document of the property was handed over. She renovated and repaired the house by spending Rs.3,75,000/-. After that, she was living with the husband along with the children. In 2012, by demanding more money, they picked up quarrel. She was also assaulted, when she was in pregnant. So, she was taken to her parental home. In 2013, third children was also born. They were compelled to vacate the house. So, she vacated the house, now she is living in Vaniyampatti



OPY Housing Board. The husband joined in the Government service for a monthly salary of Rs.47,000/-. By making false representation that he is going to buy a house in Chennai, her husband received Rs.10,50,000/-, but failed to purchase any house in Chennai. But spending money to his brother and sister. When that was enquired, he disconnected the contact. When a complaint was given before the All Women Police Station, Rajapalayam, the husband appeared and gave an undertaking that he will take care of the family. They shifted the residence to Rajapalayam Thendran Nagar. Even then, the husband did not correct himself and started harassment. The first petitioner having conduct with undesirable friends. Because of the above said continuous torture, both the parents died. Before the Police enquiry, the husband issued a cheque bearing No.676150, over the above said money that was borrowed by him. He also undertook to return the money paid as LIC premium. In-spite of repeated complaint to the police authorities, no proper action was taken. Even the childrens were not properly taken care. They were ill-treated and harassed. So after obtaining the order from the court, now childrens are in the custody of the petitioners. Apart from that, DV No.3



of 2020 also pending before the Magistrate Court Sivakasi. Even though, the cheque presented for payment, it was dishonoured due to funds insufficient. So on that account, the private complaint was filed by the respondents.

3. Seeking quashment of the same, all the accused persons are before this court by filing this petition.

4. Heard both sides.

5. It is an issue between the husband and wife. The first respondent appeared before this court in person. When I enquired the first respondent as to the possibility of settlement, she told me that divorce has been granted and they are living separately for several years. The children were also in her custody. Toward the discharge of the loan amount only, he issued the cheque that got dishonoured due to funds insufficient. Due the above said commission of the criminal activities only, she has filed the private complaint.



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6.The learned counsel appearing for the petitioners would rely upon various circumstances to show that even if we take that the cheque was issued by the first petitioner, only liability under sections 138 of the Negotiable Instruments Act will be attracted and not the criminal liability, as mentioned in the complaint. Even though, the disputed factual aspect has been stated in the complaint, in the final portion what she wants is to punish the accused persons under section 138 of the Negotiable Instruments Act and for cheating also.

7.With regard to the above said issue of cheque by the first petitioner, the copy is made available, which is also marked as Ex.P1 before the trial court. The signature in the above said document is not disputed by the first petitioner. But he would say that the above said cheque was not returned due to insufficiency of funds, but due to improper presentation. It has been returned stating that it must be presented before the proper zone. The above said return is, dated 12.09.2017. Number of blank cheques were also enclosed along with the complaint.



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8. Whether on the basis of the above said dishonour, statutory notice was also issued by the first respondent are not clear on record. Without taking proper legal course, it appears that the present complaint was filed, on 23/11/2020, much after the period of limitation. For taking action, either under section 138 of the Negotiable Instruments Act or for recovery of money mentioning in the cheque, why such improper course has been adopted by the first respondent herein is not explained by her. It has been simply stated that all the petitioners cheated her by issuing the above said cheque without sufficient money in the Bank account of the first petitioner. So, in respect of the section 138 of the Negotiable Instruments Act, taking cognizance by the trial is without basis or jurisdiction, it ought not to have been entertained. But however whether, the offence under section 420 IPC will be attracted, in view of the above said issue can be taken into account by the trial court at the time framing the charges. So this limited relief only can be granted to the petitioners. So, taking cognizance under section 138 of the Negotiable Instruments Act is set aside. But however, the trial court is permitted to take up the proceedings as to find out whether the offence under



section 420 IPC is attracted at the time of framing the charges.

9. In so far as the other petitioners are concerned namely 2 to 6, absolutely, they did not involve in the above said issue of cheque, assault, etc. But in the complaint, she has made allegation against them as if she was harassed and ill-treated, even assaulted. So in respect of the above said allegation of assault, the first petitioner must undergo the trial process. The above said subject is also pending in DV No.3 of 2020 on the file of the Judicial Magistrate, Sivakasi. So we need not go into the above said aspect. Now the case of alleged assault, criminal intimidation, ill-treatment harassment must be tried in DV No.3 of 2020. So in respect of the above said allegation of assault, the first petitioner must undergo the trial process. The above said subject is also pending in DV No.3 of 2020 on the file of the Judicial Magistrate, Sivakasi. So we need not go into the above said aspect, now the case of alleged assault, criminal intimidation, ill-treatment harassment must be tried in DV No.3 of 2020.



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10. Whether in the facts and circumstances of the case, section 420 IPC is attracted or not can be considered by the trial court, because it is a factual aspect to find out as to whether, even at that time of issuing the cheque, the first petitioner did not intend to honour the same. Since, it is a factual aspect, sitting under 482 Cr.P.C jurisdiction, it may not be appropriate on the part of this court to discuss the issue.

11. From the narration of facts mentioned in the complaint, it is seen that right from the marriage the husband and wife are not cordial. In spite of that, they are having three child, now they are in the custody of the first respondent herein. So the first respondent ought to have made proper provision for maintenance. But that was not done by him. Only to discharge the above said liability as well as money that was borrowed by him, the above said cheque was issued. Since the issuance of cheque is not disputed, whether the first petitioner right from the beginning intended to cheat the first respondent and the children can be taken into account at that time of framing the charges and trial.



12. So far as the petitioners 2 to 6 are concerned, they are totally not related to the above said issue of cheque, dishonour, cheating, etc. So, I find that continuation of proceedings against the petitioners 2 to 6 is an abuse of process court and law and is liable to be quashed. The first petitioner is directed to face the trial process. On that sole ground, this petition is partly allowed.

13. Accordingly, this criminal original petition is **dismissed in respect of the 1st petitioner/A1**. In respect of the petitioners 2 to 6/A2 to A6, this criminal original petition stands allowed and the case in CC No.95 of 2021 on the file of the Judicial Magistrate No.II, Sivakasi, is hereby quashed against them. Consequently, connected Miscellaneous Petition is closed.

20/07/2023

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G.ILANGOVAN, J

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To,

The Judicial Magistrate No.II,
Sivakasi.

Cr1.OP(MD)No.4336 of 2023

20.07.2023