



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P Nos.1180, 1183 & 1184 of 2024
and CRL.M.P Nos.820, 822 & 823 of 2024

P.Mayilsamy

...Petitioner
in Crl.O.P.No.1180 of 2024

B.Karunanithi

...Petitioner
in Crl.O.P.No.1183 of 2024

K.Annamoorthy

...Petitioner
in Crl.O.P.No.1184 of 2024

Vs.

Chemplast Sanmar Limited,
Mettur Dam,
Represented by its Sr.Personal Manager,
R.Sakkaravarthi, No.9,
Cathedral Road,
Mettur Dam-2,
Salem District.

...Respondent
in all Crl.O.Ps

PRAYER in Crl.O.P.No.1180 of 2024 : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the order passed in memo in C.C.No.38 of 2014 on the file of Judicial Magistrate No.II, Mettur dated 21.12.2023.



PRAYER in CrI.O.P.No.1183 of 2024 : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the order passed in memo in C.C.No.41 of 2014 on the file of Judicial Magistrate No.II, Mettur dated 21.12.2023.

PRAYER in CrI.O.P.No.1184 of 2024 : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the order passed in memo in C.C.No.43 of 2014 on the file of Judicial Magistrate No.II, Mettur dated 21.12.2023.

For Petitioner : Mr.B.Kumarasay

For Respondent : Mr.S.Shunmuga Sundaram
Senior Counsel for
M/s.Manuraj

ORDER

These criminal original petitions have been filed challenging the order passed by the Court below dismissing the memo filed by the petitioners seeking for discharge from the case on the ground that the very complaint filed by the respondent under Section 630 of the Companies Act is unsustainable.

2.Heard Mr.B.Kumarasamy, learned counsel appearing on behalf of the petitioners and Mr.S.Shunmuga Sundaram, learned Senior Counsel appearing on behalf of the respondent.



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3.The case of the petitioners is that the respondent Company had allotted quarters to the petitioners which were occupied by them in the course of their employment. The petitioners were dismissed from service on the ground of misconduct. Subsequent to the dismissal, the petitioners were directed to hand over the possession of the quarters that were allotted to them. Since the petitioners did not vacate the quarters, a complaint came to be filed under Section 630 of the Companies Act.

4.The petitioners had earlier approached this Court and filed quash petitions challenging the very initiation of the proceedings by the respondent Company. These quash petitions were dealt with and a common order was passed on 15.11.2023, dismissing the quash petitions and directing the Court below to complete the proceedings, within a period of two months.

5.Pursuant to the above order, the petitioner filed memo before the Court below on the ground that as on the day when the complaint was filed, Section 630 of the Companies Act was no more in force and the case is governed under Section 452 of the Companies Act, 2013. Hence, according to the petitioners, the Court below ought not to have taken cognizance of the complaint and in



view of the fact that the complaint itself is unsustainable, the petitioners wanted to be discharged from the case.

6.The Court below through the impugned order dated 21.12.2023, dismissed all the memos as not maintainable. Aggrieved by the same, these criminal original petitions have been filed before this Court.

7.In the considered view of this Court, the petitioners had already approached this Court by raising certain grounds seeking to quash the proceedings initiated by the respondent Company. While filing those quash petitions, the petitioners never raised a ground that the complaint itself is not maintainable under Section 630 of the Companies Act. In fact, such a ground was available to the petitioners even when they had filed their earlier quash petitions. The petitioners having failed to raise this ground, have gone before the Court below and have filed memo to the effect that Section 452 of the Companies Act, 2013 had come into force and therefore, the complaint filed under Section 630 of the Companies Act is not maintainable.

8.In the considered view of this Court, the Court below is governed by the procedure provided under the Code of Criminal Procedure. Therefore, if any



application is filed before the Court below, it has to be traced to some provision under the Code of Criminal Procedure. Admittedly, the trial has commenced and the proceedings are going on before the Court below and at that stage, the petitioners cannot seek for discharge from the case by filing a memo. At the best, the ground that has been raised in the memo can be taken as a ground by the petitioners to defend themselves in the case. The same will be considered by the Court below on its own merits and in accordance with law.

9. In the light of the above discussion, this Court does not find any illegality or infirmity in the order passed by the Court below in not entertaining the memo filed by the petitioners. The Court below has rightly taken into consideration the fact that the earlier quash petitions were dismissed by this Court and a direction was also given to complete the proceedings, within a time frame. The same shall be kept in mind by the Court below and in addition to the same, whatever grounds are raised by the petitioners shall also be considered independently on its own merits and in accordance with law and dismissal of the quash petitions will not come in the way of the petitioners to raise the legal grounds before the Court below.



N.ANAND VENKATESH, J

ssr

10.In the result, all these criminal original petitions are disposed of in the above terms. Consequently, connected miscellaneous petitions are closed.

29.01.2024

Index: Yes/No
Speaking order/Non-speaking Order
Neutral Citation: Yes/No
ssr

To

- 1.The Judicial Magistrate No.II, Mettur.
- 2.The Public Prosecutor,
High Court, Madras.

CRL.O.P Nos.1180, 1183 & 1184 of 2024
and CRL.M.P Nos.820, 822 & 823 of 2024