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Crl.O.P.No.4419 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2024

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THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

Crl.O.P.No.4419 of 2022

and

Crl.M.P.No.2222 of 2022

1.M/s.Sasikala Agencies,
Rep. by its Managing Partner,
A.Sundar Rajan

2.A.Sundar Rajan

3.S.Jayashree

... Petitioners

Vs.

M/s.Reftech Resources,
Rep. by its Proprietor,
Mr.K.Ramesh Babu,

...Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., praying to call for the records in connection with STC.No.737 of 2018 on the file of the Judicial Magistrate III, Salem, Salem District and quash the same.



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For Petitioners : Mr. V. R.Appaswamee

For Respondent : Mr. R.Asokan

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ORDER

The petitioners have filed this Criminal Original petitions to quash the proceedings in STC.No.737 of 2018 on the file of the Judicial Magistrate III, Salem, Salem District, in which cognizance was taken for the offence punishable under Sections 138 & 142 of Negotiable Instruments Act.

2. The case of the prosecution is that the petitioners have approached the respondent to avail financial assistance for their business and requested sum of Rs.50 lakhs, which was agreed upon by the respondent and lent on various dates. Both parties entered into a loan agreement dated 24.12.2014, whereby the petitioners agreed to repay the loan amount within 6 months and to pay 12 % interest untill repayment. Against the said loan, the petitioners executed a deed of deposit of title deeds and guarantee deed. The petitioner failed to repay the amount as agreed, the respondent issued a legal notice dated 15.11.2017 and filed a suit for recovery of money on 28.11.2017 in O.S.No.314 of 2017 against the petitioners, which is pending. On 20.07.2018, the petitioner approached the respondent and issued three



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cheques in favour of the respondent, each for a sum of Rs.5 lakhs, totaling 15 lakhs towards part payment to discharge the said loan amount. The cheques were presented for collection and the same were returned as unpaid on 24.07.2018 with an endorsement “kindly contact the drawer”. Hence, the complaint.

3. The learned counsel for the petitioners submitted that the private complaint in STC.No.737 of 2018 is liable to be quashed on the ground that it is not necessary for the petitioners to issue the said cheques pendency the Civil Suit and without recording the same in the suit proceedings. He further submitted that the amount claimed by the respondent is not legally enforceable debt since he filed the said suit for recovery of money after the period of limitation and there is no proof for case transaction. He also submitted that in the case in Crl.O.P.No.10406 of 2019, it was held that if a cheque is returned for the reason “kindly contact drawer” by the Drawee Bank and please present again”, the complainant has to comply with the requirement of the bank and ought to have proceeded to file a complaint under Section 138 of the Negotiable Instrument Act. The Court below went wrong in taking cognizance of the complaint, and as a result, the



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C.C.No.5476 of 2016 is quashed. Hence, he prayed to quash the proceedings against them in STC.No.737 of 2018.

4. The learned counsel for the respondent submitted that as he paid to 138 proceedings and sufficient material even the rejection return by the drawee bank also amounts to dishonor. It was rightly observed by this Court. To support his contention he relied on the order of this Court in Crl.O.P.No.27764 of 2022, dated 28.06.2021, S.Vijayan Vs. Marimuthu, in which it reads as follows:

“9.In the case Sachin Dubey as cited Supra, the High Court of Madhya has allowed the quashing petition filed by the petitioner on the ground that the legal notice has not been served on the respondent within the statutory period and secondly, on the basis of the remark noted on the cheque return memo “ kindly contact drawer drawee bank and please present again”. However, both eh points have now been considered by the Hon'ble Apex Court in the case of Kishore Sharma cited supra and the order of he impugned Judgement was set aside. The Hon'ble Apex Court held that the return of cheque for the above said reason cannot be a reason to quash the proceedings and it has to be tested, decided only during trial.”



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5. Considering the facts and circumstances and also the ratio laid down by the respondent in this case is squarely applicable to the facts of the case, hence this Court declines to quash the proceedings in STC.No.737 of 2018 on the file of the Judicial Magistrate III, Salem, Salem District.

6. Accordingly, this Criminal Original Petition is dismissed as devoid of merits and Consequently, the connected miscellaneous petition is closed.

09.01.2024

Speaking Order/ Non Speaking Order

Index: Yes/ No

Neutral Citation: Yes/No

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T.V.THAMILSELVI, J.



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