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*Crl.O.P.Nos.6596 & 6597
of 2023*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.3.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Criminal Original Petition Nos.6596 & 6597 of 2023
& Crl.M.P.Nos.4132 & 4134 to 4136 of 2023

T.S.Arumugam

...Petitioner in
both cases

Vs.

M/s.S.K.Builder, rep.by its
Proprietor Mr.S.Balasubramani

...Respondent in
both cases

PETITIONS under Section 482 of the Criminal Procedure Code praying to call for the records and quash the proceedings respectively in S.T.C.Nos.1932 and 1933 of 2022 on the file of the learned Metropolitan Magistrate, Fast Track Court No.1, Allikulam, Chennai.

For Petitioner : Mr.K.Raja for
Mr.N.Kolandaivelu

For Respondent : Mr.V.Anil Kumar for
Mr.R.Arunkumar

COMMON ORDER

These petitions are filed by the petitioner challenging the proceedings initiated by the respondent against the petitioner under



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Section 138 of the Negotiable Instruments Act (for short, the Act).

2. Heard the learned counsel appearing on behalf of the petitioner and the learned counsel appearing on behalf of the respondent.

3. The main ground that was urged by the learned counsel appearing on behalf of the petitioner is that as per the statutory notice that was issued by the respondent and as per the averments made in the complaints, the total amount that was due and payable by the petitioner was Rs.98,62,250/-. Out of this amount, it was also admitted that a sum of Rs.75 lakhs was paid. However, the outstanding amount has been arrived at to the tune of Rs.27,53,494/- whereas the actual outstanding amount was only Rs.23,62,250/-. Towards recovery of this outstanding amount, two post dated cheques have been used by the respondent/complainant, one for a sum of Rs.20 lakhs and the other for a sum of Rs.5 lakhs. In short, for the admitted outstanding amount of Rs.23,62,250/-, the respondent/complainant filled up the cheques altogether for a sum of Rs.25 lakhs. In view of the same, it has been contended that without there being a



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specific endorsement under Section 56 of the Act, the cheques could not have been presented for the total amount of Rs.25 lakhs as mentioned in the cheques.

4. To substantiate the submissions, the learned counsel for the petitioner relies upon the judgment of the Apex Court in the case of ***Dashrathbhai Trikambhai Patel Vs. Hitesh Mahendrabhai Patel*** [reported in 2022 (3) MWN (Crl.) DCC 81 (SC)].

5. The averments made in the statutory notice as well as the complaints would show that the respondent/complainant raised a specific plea that the total outstanding dues recoverable from the petitioner is Rs.27,53,494/-. Out of this amount, the cheques were given for a total sum of Rs.25 lakhs. Just because the respondent had not given the details as to how they arrived at a sum of Rs.27,53,494/-, that cannot be a ground to be considered in these quash petitions. It is something to be established before the Trial Court.



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6. It is seen that there is a serious dispute between the petitioner and the respondent with respect construction of a building and that there has been exchange of several notices between the parties. The petitioner is also making a counter claim against the respondent. All these issues are purely factual in nature and based on the materials that have been placed before this Court, it is not permissible for this Court to get into appreciation of evidence with respect to the materials relied upon. That is way beyond the jurisdiction of this Court for interference under Section 482 of the Criminal Procedure Code.

7. Further, the facts of this case and grounds raised these quash petitions do not fall within the parameters laid down by the Apex Court in the case of ***State of Haryana Vs. Bhajan Lal [reported in (1992) Suppl (1) SCC 335]***. It is left open to the petitioner to raise all the grounds before the Court below and the same shall be considered on its own merits and in accordance with law. This Court is not inclined to interfere with the proceedings pending before the Court below.



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8. Accordingly, this Criminal Original Petitions are dismissed with a direction to the Court below to complete the proceedings respectively in S.T.C.Nos.1932 and 1933 of 2022 on the file of the learned Metropolitan Magistrate, Fast Track Court No.1, Allikulam, Chennai within a period of six months from the date of receipt of a copy of this order. The trial shall be conducted on a day to day basis in accordance with the guidelines given by Hon'ble Supreme Court in the case of ***Vinod Kumar Vs State of Punjab [reported in 2015 (1) MLJ (Crl) 288 (SC)]***. If the petitioner adopts any dilatory tactics, it is open to the Trial Court to insist upon the presence of the petitioner and remand him to custody as per the judgment of the Hon'ble Supreme Court in the case of ***State of Uttar Pradesh Vs. Shambhu Nath Singh [reported in JT 2001 (4) SC 3191]***. Consequently, the connected Crl.M.Ps. are closed.

06.3.2024

RS



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N.ANAND VENKATESH,J

RS

To

1.The Metropolitan Magistrate, Fast
Track Court No.1, Allikulam,
Chennai.

2.The Public Prosecutor,
High Court, Madras

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