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CrI.O.P.No. 3738 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CrI.O.P.No.3738 of 2023

and

CrI.M.P.No.2361 & 2363 of 2023

1.S.K.S.Jewellers,
Rep. by its authorized Signatory
A.Senthilkumar
No.5/613, Dhanalakshmi Nagar,
Dasanayakkanpatti,
Salem - 636 201.

2. Senthilkumar

... Petitioners

Vs.

P.Ragunathan

..Respondent

PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records in S.T.C.No.6227of 2021 on the file of the learned Judicial Magistrate No.I, Salem and to quash the entire proceedings.



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For Petitioners : Mr.R.John Sathyan,
Senior Counsel
for Mr.S.Vijayanand

ORDER

This Criminal Original Petition has been filed to quash the proceedings in S.T.C.No.6227of 2021 on the file of the learned Judicial Magistrate No.I, Salem.

2. The case of the prosecution is that the second petitioner, known to the respondent since 2017 and acting as the Authorized Signatory of the first petitioner company, received a total of Rs. 2.40 Crores from the respondent and his wife Vasanthi, partly in cash and partly through bank transactions, thereby promising to purchase the land on their behalf. However, no land was purchased. Subsequently, on 05.03.2021, the second petitioner acknowledged the debt and issued five post-dated cheques totaling Rs. 2.30 crores, assuring that they would be honored. Three of these cheques, presented for collection between April and May 2021, were returned unpaid due to insufficient funds. Despite legal



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notice, the second petitioner failed to repay the amount. Based on this, the respondent lodged a private complaint before the learned Judicial Magistrate No.I, Salem and the same has been taken cognizance in S.T.C.No.6227of 2021.

3. The learned counsel for the petitioners submitted that the allegations against the petitioners are baseless and without merit, and the case is built on fabricated grounds. The evidence presented does not establish the petitioners' connection to the alleged fraud or the dishonored cheques. The respondent has failed to produce credible evidence to substantiate the claim of fraud, and the complaint lacks merit. Therefore, he prays for the dismissal of the petition.

4. Heard learned counsel for the petitioners and perused the materials placed before this Court.

5. After considering the submissions of both parties, this Court observed that a *prima facie* case under Section 138 of N.I.Act is made out as against the petitioners, supported by dishonored cheques and



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return memos. The petitioners have failed to provide adequate defense against the charges. That apart, it is seen that based on the complaint lodged by the respondent, the learned Judicial Magistrate No.I, Salem, has taken cognizance in S.T.C.No.6227 of 2021 and it is pending. Interference at this stage is unwarranted as the matter involves disputed facts that require full-fledged trial.

6. The Hon'ble Supreme Court of India, in the judgment reported in **2019 (4) SCC 351** in the case of ***Devendra Prasad Singh vs. State of Bihar & Anr. (Criminal Appeal No.579 of 2019, dated 02.04.2019)***, while dealing with a petition to quash the entire criminal proceedings, held that the High Courts have no jurisdiction to appreciate the statements of witnesses and record a finding that there were inconsistencies in their statements, and therefore, no *prima facie* case was made out against the accused. Such an exercise can be done only by the Trial Court while deciding the case on merits or by the Appellate Court while deciding the appeal arising out of the final order. The charge sheet having been laid on the basis of inconsistent statements under



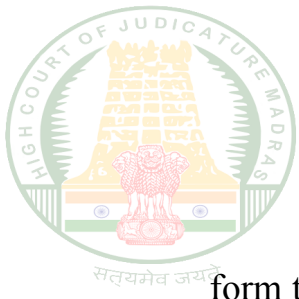
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Section 180 of the Bharatiya Nagarik Suraksha Sanhita, 2023, is not a ground for quashing at the pre-trial stage.

7. Further, the Hon'ble Supreme Court of India, in the judgment reported in **2019 (10) SCC 686** in the case of ***Central Bureau of Investigation vs. Arvind Khanna (Criminal Appeal No.1572 of 2019, dated 17.10.2019)***, held that the High Courts cannot record findings on disputed facts. The defence of the accused is to be tested after appreciation of evidence by the Trial Court during trial. Therefore, this Court has no power to consider disputed facts under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

8. The Hon'ble Supreme Court of India, in another judgment ***dated 02.12.2019*** passed in ***Criminal Appeal No.1817 of 2019*** in the case of ***M. Jayanthi vs. K.R. Meenakshi & Anr.***, held that while considering a petition for quashing a complaint or charge sheet, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should examine is whether the allegations in the complaint



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form the basis of the ingredients constituting the offences complained of.

Further, the Court can also examine whether the preconditions required for taking cognizance have been complied with, and whether the allegations contained in the complaint, even if accepted in their entirety, would constitute the offence alleged. Whether the accused will be able to disprove the allegations is a matter to be determined during trial.

9. Further, this Court cannot, at this stage, observe that the initiation of criminal proceedings is malicious. Whether the proceedings are malicious or not is a matter to be considered only at the conclusion of the trial. Therefore, the ground raised by the petitioners to quash the final report/charge sheet cannot be entertained for quashing the entire proceedings at this stage.

10. In view of the above discussion, this Court is not inclined to quash the proceedings in S.T.C.No.6227of 2021 on the file of the learned Judicial Magistrate No.I, Salem. The petitioners are at liberty to raise all the grounds before the Trial Court.



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11. Accordingly, the Criminal Original Petition stands dismissed.

Consequently, connected miscellaneous petitions are closed.

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Neutral citation : Yes/No
Speaking/non-speaking order
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G.K.ILANTHIRAIYAN, J.

shk

To

1. The Judicial Magistrate No.I, Salem.

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and CrI.M.P.No.2361 & 2363 of 2023

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