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Crl.O.P.No.10879 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2025

CORAM:

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

Crl.O.P.No.10879 of 2025

and

Crl.M.P.Nos.7201 and 7202 of 2025

1. M/s. Oliva Building Foundation,
Rep. by it's Proprietor M.Santhanamary,
No.1/229, Stalin Street, Sachinthannapuram,
Thazambur, Navalur, Chennai-600130.

2. M.Santhanamary

... Petitioners

Vs.

M.Gangan Bothra

... Respondent

PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, praying to call for the records and quash the case in STC.No.2672 of 2023 on the file of the FTC-IV Metropolitan Magistrate, George Town, Chennai.

For Petitioners : Mr.K.Sathyabal



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ORDER

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This petition has been filed to quash the proceedings in STC.No.2672 of 2023 on the file of the FTC-IV Metropolitan Magistrate, George Town, Chennai.

2. Heard the learned counsel for the petitioners and perused the materials available on record.

3. The petitioners are accused in the complaint lodged by the respondent for the offences punishable under Section 138 of the Negotiable Instruments Act, alleging that the petitioners are running a business of construction-related activities under the name and style of Oliva Building Foundation. The petitioners approached the respondent for financial assistance as a loan for their business. They borrowed a sum of Rs.1,50,00,000/-, for which they had executed necessary documents in favour of the respondent. They agreed to repay the entire loan amount with interest on demand. In order to repay the said loan amount towards



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discharge of the actual liability out of the total liability, the petitioners had issued a cheque for a sum of Rs.1,50,00,000/-. When it was presented for collection, it was returned dishonoured for the reason "payment stopped by the drawer". After causing a statutory notice, the respondent filed a complaint, and the same has been taken cognizance in S.T.C.No.2672 of 2023.

4. The learned counsel for the petitioners would submit that the petitioners had borrowed only a sum of Rs.50,00,000/- in the month of February 2023, and agreed to repay the said amount within 15 months. At the time of borrowing, the petitioners had issued a post-dated cheque for security purpose. Therefore, the cheque, which was presented for collection, is not at all issued for any legally enforceable debt.

5. On perusal of the records, it is revealed that after receipt of the statutory notice, the petitioners did not even send any reply to the legal notice. Though a copy of the reply notice is annexed along with the typed set, there is absolutely no proof to show that the petitioners issued a reply



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notice for the statutory notice issued by the respondent herein. That apart, the grounds raised by the petitioners are all factual in nature, and the disputed facts cannot be gone into by way of a quash petition under Section 482 of Cr.P.C. These grounds can be considered before the Trial Court during the trial by way of cross-examination of the prosecution witnesses. Therefore, this Court finds no reason to quash the proceedings in S.T.C.No.2672 of 2023.

6. Accordingly, this Criminal Original Petition is dismissed. However, the Trial Court is directed to complete the trial within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are also closed.

15.04.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order

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To
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1. The FTC-IV Metropolitan Magistrate,
George Town,
Chennai.
2. The Public Prosecutor,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN. J,

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