

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2019

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.16193 & 17016 of 2019
and Crl.M.P Nos.8091 & 8092 of 2019

Arun

Petitioner
in both Crl.O.Ps

vs.

The State rep. by its
The Inspector of Police,
Vellagoundenpatti Police Station,
Namakkal,
Namakkal District.

Respondent in
Crl.O.P.No.17016 of 2019

Boopalan

Respondent in
Crl.O.P.No.16193 of 2019

PRAYER in Crl.O.P.No.16193 of 2019: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the proceedings in STC No.185 of 2019 pending on the file of the Fast Track Judicial Magistrate No.II, Erode.

PRAYER in Crl.O.P.No.17016 of 2019: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to direct the respondent police to file a final report in Crime No.45 of 2019.

For Petitioner : Mr.N.Umapathi
in both Crl.O.Ps

For Respondents : Mr.M.Mohamed Riyaz
Additional Public Prosecutor
in Crl.O.P.No.17016 of 2019

COMMON ORDER

The petitioner is facing criminal prosecution initiated by the respondent under Section 138 of the Negotiable Instruments Act. The defence of the petitioner is that the cheques were stolen and it was filled up and its being misused against the petitioner. The petitioner has also given a complaint in this regard to the respondent police and an FIR was registered in Crime No.45 of 2019 and investigation is still pending.

2. The learned counsel for the petitioner submitted that the petitioner apart from taking the defence that the cheques have been stolen and it was filled up and used against the petitioner, also wants to prosecute the respondent for the offence under Sections 380, 467, 468 and 471 of IPC. Without a final report being filed in the FIR registered before the respondent police, the petitioner will not be able to defend himself effectively in STC No.185 of 2019.

3. In a case of this nature, the law is well settled to the effect that the accused person apart from raising the defence is also permitted to parallelly prosecute the complainant for the alleged offence. Useful reference can be made to the judgment of the Hon'ble Supreme of India in the case of ***Central Bank of India and another vs. M/s.Saxons Farms and others,***

reported in **1999 (III) CTC 611**. This judgment was followed by this Court in the case of **V.Kannan and others vs. State by District Crime Branch, Namakkal, Namakkal District**, reported in **2007 4 CTC 520**.

4. The respondent police will not be able to effectively investigate this case since now the original cheques are before the Court below and therefore it will take a lot of time for the respondent police to collect these cheques and to get expert opinion. It will be more appropriate, if the petitioner is permitted to file a private complaint before the same Court with the same set of allegations, so that the same Court can try both the cases. This will effectively avoid multiplicity of the proceedings and the same Court can effectively deal with the issue as between the same parties.

5. The respondent police in Crl.O.P.17016 of 2019 is directed to close the FIR in Crime No.45 of 2019. The petitioner is given liberty to file a private complaint before the Judicial Magistrate Court and the same shall be taken cognizance and tried along with STC No.185 of 2019.

6. This Court is not inclined to interfere with the proceedings in STC No.185 of 2019 and it is left open to the petitioner to raise all the grounds before the Court below and the Court below shall consider the same on its

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SSR

own merits and in accordance with law. The Court below shall try both the complaints in accordance with law and complete the proceedings as expeditiously as possible.

7. These Criminal Original Petitions are disposed of, accordingly. Consequently, connected miscellaneous petitions are closed.

01.07.2019

Speaking Order/Non-Speaking Order

Index : Yes/No

Internet : Yes/No

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Note: Issue Order Copy on 03.07.2019.

To

1. The Fast Track Judicial Magistrate No.II, Erode.

2. The Inspector of Police,
Vellagoundenpatti Police
Station, Namakkal,
Namakkal District.

3. The Public Prosecutor,
High Court, Madras.

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