

Rajendiran and Another Vs. Murugan

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Court : Chennai

Decided On : Dec-09-2015

Judge : B. Rajendran

Appeal No. : Criminal Revision Case No. 88 of 2014 & M.P. No. 2 of 2014 in CrI. RC SR No. 53356 of 2013, M.P. No. 1 of 2014 in CrI. RC SR No. 321 of 2014

Appellant : Rajendiran and Another

Respondent : Murugan

Judgement :

(Prayer: Criminal Revision Case filed under Section 397 read with Section 401 of Criminal Procedure Code against the Order dated 04.02.2013 passed in CrI.M.P. No. 2779 of 2012 in C.C. No. 73 of 2012 on the file of the Judicial Magistrate No.II, Puducherry.)

1. The revision petitioners are the accused in C.C. No. 73 of 2012 on the file of the learned Judicial Magistrate No.II, Puducherry. The said Calander Case No. 73 of 2012 has been filed by the respondent herein under Section 200 of Cr.P.C. praying to launch prosecution against the revision petitioners herein for having committed the alleged offences punishable under Section 468, 471 and 420 of IPC. Pending the Calander Case in C.C. No. 73 of 2012, the petitioners herein have filed CrI.M.P. No. 2779 of 2012 under Section 245 of Cr.P.C. to discharge them from the purview of Criminal Prosecution. The trial Court, by the order dated

04.02.2013 dismissed the Crl.M.P. No. 2779 of 2012 and refused to discharge the petitioners from the criminal prosecution. Aggrieved by the same, the present Criminal Revision Case has been filed.

2. Pending the Criminal Revision Case, the respondent herein has filed M.P. No. 2 of 2014 in Crl.RC SR No. 53356 of 2013 to condone the delay of 146 days in filing the Criminal Revision Case against the order dated 26.02.2013 passed in Crl.M.P. No. 7602 of 2011 in STR No. 613 of 2010 on the file of the learned Judicial Magistrate No.II, Puducherry. Similarly, the respondent has also filed M.P. No. 1 of 2014 in Crl.RC SR No. 321 of 2014 to condone the delay of 202 days in filing Criminal Revision Case against the order dated 26.02.2013 passed in Crl.M.P. No. 7601 of 2011 in STR No. 638 of 2010 on the file of the learned Judicial Magistrate No.II, Puducherry. In both these petitions, this Court ordered notice to the petitioners herein and they have filed a detailed counter.

3. The respondent herein has filed the private complaint in C.C. No. 73 of 2012 before the trial court on 05.05.2010. In the private complaint, it was contended by the respondent herein that the petitioners herein have entered into two agreements with him. The first petitioner entered into agreements dated 26.12.2008 and 28.05.2009 and the second petitioner entered into agreements dated 26.12.2008 and 30.01.2009 respectively for purchase of apartments. The total sale consideration of each Apartments was agreed at Rs.18,00,000/-. The first petitioner has paid a sum of Rs.17,50,000/- and Rs.17,00,000/- respectively to the respondent as sale advance. The second petitioner has paid a sum of Rs.17,50,000/- towards sale advance. Time was the essence of the agreements entered into by the petitioners with the respondent. While so, the petitioners have obtained from the respondent seven blank cheques drawn on ICICI Bank, Main Branch; Indian Overseas Bank, Lawspet Branch and State Bank of India, Tattanchavadi Branch. Apart from the seven cheques, the petitioners have obtained 5 set of blank promisory notes duly signed by the respondent. The petitioners have also received blank stamp paper in the denomination of Rs.20/- apart from blank signed letter heads of the respondent with an ill intention to cheat and defraud him. Further, on 25.11.2009, the petitioners have unlawfully entered into his house and stolen two cheques signed by the respondent and his son

drawn on ICICI Bank, Pondicherry bearing Cheque Nos. 832378 and 832379. Thereafter, on 10.12.2009, the petitioners have threatened the respondent over phone by stating that they are in possession of the two cheques duly signed by him and his son Dhandapani and it would be used against him to institute proceedings under Section 138 of the Negotiable Instruments Act against him. The petitioners have also presented the cheque No. 832378 dated 15.12.2009 for Rs.34,20,000/- and other cheque No.832379 dated 21.12.2009 for Rs.17,50,000/- for encashment. In this connection, the respondent has given a complaint dated 07.02.2010 before the Auroville Police Station which was taken on file in Serial No. 21 of 2010. However, as the police did not take any action against the petitioners, he has filed the private complaint under Section 200 of Cr.P.C. to punish the petitioners for having committed the offences punishable under Sections 468, 471 and 420 of IPC.

4. The private complaint was taken on file by the learned Judicial Magistrate, Vanur and the sworn statement of the respondent was taken on 28.07.2010 in C.C. No. 191 of 2010. Apart from the respondent, another witness was examined and thereafter, the learned Judicial Magistrate, Vanur has issued summons to the petitioners for their appearance. Aggrieved by the same, the petitioners have filed Crl.OP No. 25209 of 2011 before this Court under Section 482 of Cr.P.C. to quash the private complaint filed by the respondent. By order dated 01.11.2011, this Court, disposed of the Crl.OP No. 25209 of 2011 by transferring the private complaint filed by the respondent in C.C. No. 191 of 2010 from the file of the learned Judicial Magistrate, Vanur to the file of the learned Judicial Magistrate, Puducherry to be tried along with the proceedings instituted by the petitioners herein against the respondent under Section 138 of The Negotiable Instruments Act. Thereafter, the case was taken on file on 24.12.2011 and it was posted for appearance of the parties. At this juncture, on 10.04.2012, the petitioners have filed the present petition for discharge.

5. In the petition for discharge, the petitioners would mainly contend that the private complaint has been filed by the respondent belatedly after receipt of summons in the complaint filed by them under Section 138 of the Negotiable Instruments Act. According to the petitioners, the private complaint has been filed

by the respondent as a counter-blast to the proceedings initiated by them under Section 138 of the Negotiable Instruments Act. Their main ground of attack in the petition for discharge is that the petitioners have entered into separate unregistered agreement for sale for purchase of two apartments on 27.12.2008 and paid Rs.17,50,000/- and Rs.35,00,000/- respectively to the respondent towards advance sale consideration. In addition to the above said sale agreements, the respondent induced the petitioners to purchase two more apartments for the same price, therefore, the second petitioner entered into an agreement on 30.01.2009 and paid a sum of Rs.2,00,000/- as advance. The said agreement dated 30.01.2009 was registered as document No. 383 of 2009 on the file of Sub-Registrar, Vanur. Subsequently, the respondent received a sum of Rs.10,00,000/- on 12.02.2009 and another sum of Rs.5,50,000/- on 22.02.2009 towards further advance amount. Similarly, the first petitioner also entered into an agreement of sale dated 28.05.2009 for purchase of another flat and paid a sum of Rs.17,00,000/- as advance sale consideration. As the respondent did not complete the construction of the building, the petitioners sought for refund of the amount. While so, on 05.07.2009, the respondent and his son Dhandapani have agreed to refund the amount of Rs.52,00,000/- received from the petitioners upon cancellation of the agreements of sale within a month. There was a compromise entered into between the petitioners and the respondent as per which the respondent and his son Dhandapani have agreed to discharge their liability of Rs.52,00,000/-. Accordingly, the respondent issued three post dated cheques in favour of the petitioners. The first cheque dated 26.06.2009 was for Rs.30,000/-. The second cheque dated 15.12.2009 was for Rs.34,20,000/- and the third cheque was dated 21.12.2009 for Rs.17,50,000/-. The first cheque issued by the respondent for Rs.30,000/- was encashed, however, the other two cheques, on their presentation, were dishonoured for the reason there is no sufficient funds in the bank account to honour the cheques. Therefore, on 02.01.2010, the petitioners issued a statutory notice to the respondent for which a reply notice dated 08.01.2010 was issued by the respondent herein. Thereafter, the petitioners herein have filed S.T.R. Nos. 613 and 638 of 2010 before the learned Judicial Magistrate No.II, Puducherry under Section 138 of the Negotiable Instruments Act on 27.01.2010.

6. After filing STR Nos. 613 and 638 of 2010, the petitioners also filed O.S. No. 15 of 2010 on the file of the learned Principal District Judge, Villupuram against the respondent and his son for recovery of money covered under the two cheques which were dishonoured. The said suit was transferred to the file of Fast Track Court No.2, Tindivanam and re-numbered as O.S. No. 13 of 2010. The suit was once again transferred to the file of Fast Track Court No.1, Tindivanam and re-numbered as O.S. No. 1 of 2012. The suit was further transferred to the file of the learned III Additional District Judge, Kallakurichi and re-numbered as O.S. No. 1 of 2014 and now it is pending on the file of the learned Principal District Judge, Cuddalore. The second petitioner filed separate suit in O.S. No. 4 of 2012 before the learned Principal District Judge, Villupuram and it was subsequently transferred to the file of the learned Principal District Judge, Cuddalore and re-numbered as O.S. No. 29 of 2014. This suit has been filed for specific performance of the sale agreement the respondent entered into with the second petitioner.

7. According to the petitioners, only after receipt of notice in the STR Nos. 613 of 2010 and 638 of 2010 filed by them, the respondent has filed the private complaint against them as a counter-blast. On receipt of the summons in the private complaint, the petitioners have also filed Crl.OP No. 25209 of 2011 before this Court to quash the criminal proceedings and it was disposed of by this Court on 24.10.2010 with a direction to try the private complaint filed by the respondent along with STR Nos. 613 and 638 of 2010.

8. According to the petitioners, during the pendency of all these proceedings, the petitioners and the respondent have entered into a compromise to settle the dispute out of Court on 29.04.2013. Accordingly, a joint compromise memo dated 29.04.2013 was entered into between the petitioners and the respondent which was duly signed by the counsel for the petitioners and respondents besides that it was duly signed by the petitioners and respondent. The joint compromise memo was filed before the learned I Additional District Judge, Tindivanam and the learned I Additional District Judge, Tindivanam recorded the presence of the parties as well as their counsel and disposed of the suit in O.S. No. 1 of 2012 on 27.09.2013 in terms of the compromise. As per the compromise memo, the

respondent and his son Dhandapani agreed to pay Rs.66,00,000/- to the petitioners out of the total claim made in the two suits filed by them at Rs.93,65,240/- within six months i.e., on or before 31.10.2013. Time was the essence of the compromise memo entered into between the parties. It is pertinent to note that in the meantime, in the other suit filed by the second petitioner in O.S. No. 4 of 2012 on the file of Principal District Judge, Villupuram, which was subsequently transferred and re-numbered as O.S. No. 29 of 2014 on the file of learned Principal District Judge, Cuddalore, a copy of the compromise memo dated 29.04.2013 was filed and it was marked as Ex.A1 in that suit.

9. According to the petitioners, the suit was taken up for reporting of settlement on 30.10.2013. On the last date of expiry of the six months period stipulated in the compromise memo dated 29.04.2013, namely 30.10.2013, the respondent has filed a change of vakalath in the suit in O.S. No. 1 of 2012 and filed a petition in unnumbered I.A. number of 2014 to strike off the compromise memo dated 29.04.2013 entered into with the petitioners by contending that the compromise was not entered into voluntarily and it was made to be executed owing to pressure from the petitioners. The said petition was rejected by the learned Principal District Judge, Villupuram on 03.01.2014 by observing that the allegations made by the respondent in the unnumbered application deserves initiation of contempt proceedings against him. It was further observed that the compromise memo was duly recorded after hearing the parties and their counsel and there is no scope for granting the relief as prayed for. Aggrieved by the said order dated 03.01.2014, the respondent has filed CRP No. 3498 of 2014 before this Court and on 12.11.2014, it was dismissed as withdrawn.

10. The learned Senior counsel appearing for the petitioners would vehemently contend that the trial Court has failed to consider the joint memo of compromise entered into between the parties on 29.04.2013 which would indicate that the allegations made in the private complaint are nothing but false. It is further contended that the cheques were duly issued by the respondent for legally enforceable debt, which could be evident that out of the three cheques, one cheque for Rs.30,000/- was encashed by the petitioners and the other two cheques were dishonoured for want of funds. The petitioners, in order to purchase

peace, have agreed for a compromise and the compromise memo was duly recorded by the Court, while so, the filing of the private complaint by the respondent is nothing but an abuse of process of law. Even the private complaint in C.C. No. 73 of 2012 has been filed by the respondent on 05.05.2010 much after receipt of summons in STR Nos. STR Nos. 613 and 618 of 2010 filed by the petitioners on 27.01.2010. The fact that the compromise memo was duly entered into could be evidenced from the fact that it was marked as Ex.A1 in O.S. No. 29 of 2014 on the file of learned Principal District Judge, Cuddalore which was filed by the second petitioner herein. The compromise memo dated 29.04.2013 clearly indicates that the respondent is liable to pay the amount covered under the three cheques issued by him, out of which the first cheque for Rs.30,000/- has been encashed. When the respondent has performed part of his obligation in honouring one cheque, the dishonour of the other two cheques would indicate that he has a legally enforceable debt and liability to be discharged towards the petitioners. In any event, the dispute between the parties has culminated in a memo of compromise dated 29.04.2013, while so, the present private complaint filed by the respondent can be construed as an abuse of process of law. In such circumstances, the petitioners need not undergo the ordeal of trial in the private complaint filed by the respondent. The allegations made by the respondent that the cheques have been stolen by the petitioners is contrary to truth and also the admission made by him in the reply notice dated 08.01.2010 issued by him. In the reply notice dated 08.01.2010, it was categorically indicated by the respondent that the cheques were issued towards security but in the private complaint, a totally contra stand has been taken by the respondent alleging that the cheques were stolen by the petitioners from the house of the respondent. At any rate, the private complaint is belated and it was filed as a counter-blast to the proceedings initiated by the petitioners in STR Nos. 613 of 2010 and 638 of 2010 under Section 138 of the Negotiable Instruments Act so as to pre-empt the petitioners from proceedings with the complaints filed under Section 138 of The Negotiable Instruments Act. The private complaint was filed on 05.05.2010 whereas, the petitioners have filed STR Nos. 613 and 638 of 2010 as early as on 27.01.2010. Thus, after receipt of notice in STR Nos. 613 and 638 of 2010, the respondent has filed the private complaint as an off-shoot to the proceedings initiated by the

petitioners under Section 138 of The Negotiable Instruments Act only to harass the petitioners. The learned Senior counsel therefore would submit that when there is no prima facie case made out against the petitioners, they are entitled for discharge from the criminal prosecution. The trial Court failed to consider the factual aspects while dismissing the petition for discharge filed by the petitioners. Therefore, the learned Senior counsel for the petitioners would pray for allowing the Criminal Revision Case.

11. Per contra, the learned senior counsel appearing for the respondent would contend that the petitioners have already filed CrI.OP No. 25209 of 2010 before this Court and it was dismissed on 01.11.2011 with a direction to try the private complaint along with STR Nos. 613 and 638 of 2010 filed by them. After dismissal of the Criminal Original Petition, the petitioners have filed the present petition for discharge before the trial court. The learned senior counsel for the respondent would vehemently contend that the respondent has disputed the very compromise entered into with the petitioners by stating that he was forced and compelled to sign the compromise memo dated 29.04.2013 and therefore it will not bind the respondent in any manner. In fact, the respondent has filed an application to strike off the compromise memo dated 29.04.2013, but it was rejected by the trial court, against which the respondent has also filed CRP No. 3498 of 2014 before this Court. In so far as the private complaint filed by the respondent herein, he has made out a prima facie case for proceeding against the petitioners for having committed the offences of cheating and fabrication of documents and therefore, the petitioners are not entitled for discharge at this stage. The petitioners have to face the trial and only during trial, it could be examined as to whether the petitioners are guilty of the offences complained of or not. In the order dated 01.11.2011 passed by this Court in CrI.OP No. 25209 of 2010 filed by the petitioners, this Court specifically directed that the private complaint filed by the respondent has to be tried along with STR Nos. 613 and 638 of 2010 filed by the petitioners. Therefore, the learned senior counsel for the respondent would contend that the trial court is right in refusing to discharge the petitioners from the criminal prosecution launched by the respondent and he prayed for dismissal of the Criminal Revision Case.

12. As regards M.P. No. 2 of 2014 in CrI.RC SR No. 53356 of 2013 to condone the delay of 146 days in filing the Criminal Revision Case against the order dated 26.02.2013 passed in CrI.M.P. No. 7602 of 2011 in STR No. 613 of 2010 and M.P. No. 1 of 2014 in CrI.RC SR No. 321 of 2014 to condone the delay of 202 days in filing Criminal Revision Case against the order dated 26.02.2013 passed in CrI.M.P. No. 7601 of 2011 in STR No. 638 of 2010 on the file of the learned Judicial Magistrate No.II, Puducherry, the learned senior counsel for the respondent would contend that the respondent has filed CrI.MP No. 7602 of 2011 and 7601 of 2011 under Section 258 of Cr.P.C. to stop the proceedings in STR No. 613 of 2010 and O.S. No. 15 of 2010 (now pending as OS No. 1 of 2012 on the file of Additional Principal Judge No.1, Tindivanam) and the same were dismissed on 26.02.2013. The respondent could not get the certified copy of the order dated 26.02.2013 immediately due to his ill health. Further, the erstwhile lawyer engaged by the respondent has returned the bundle to him and thereafter the respondent has engaged a new counsel on record, who obtained certified copy of the order dated 26.02.2013. In that process, the delay had occurred in filing the Criminal Revision Cases against the order dated 26.02.2013. The delay in filing Criminal Revision Cases against the order dated 26.02.2013 is neither wilful nor wanton and he prayed for condoning the delay.

13. The learned senior counsel appearing for the petitioners, on the contrary, would contend that the petitions in MP Nos. 2 and 1 of 2014 are not maintainable. According to the learned senior counsel for the petitioners, the respondent has already filed CrI.OP No. 7664 and 7689 of 2010 before this Court under Section 482 of Cr.P.C. to quash the proceedings in STR Nos. 613 and 638 of 2010 but they were dismissed as withdrawn by this Court on 17.08.2010. In fact, the petitioners have filed a detailed counter in both the petitions stating that the reason for delay is not at all valid one and the respondent has simply accused the erstwhile lawyer and blamed him for the delay. Such an averment is not correct besides that the respondent has not even produced any documentary evidence or notice given by the erstwhile counsel to substantiate the delay. While so, the present petitions for condoning the delay in filing the Criminal Revision Case is legally not sustainable and he prayed for dismissal of both the petitions.

14. I heard the learned senior counsel for the petitioners as well as the learned senior counsel for the respondent. I have carefully examined the records made available, including the order dated 04.02.2013, which is impugned in this Criminal Revision Case.

15. The petitioners have filed the petition in CrI.M.P. No. 2779 of 2012 in C.C. No. 73 of 2012 on the file of the learned Judicial Magistrate No.II, Puducherry, seeking to discharge them from the criminal prosecution launched at the instance of the respondent by way of a private complaint. On appreciation of the factual matrix, it is clear that there were sale transactions between the petitioners and the respondent for purchase/sale of apartments and they have entered into sale agreements on various dates. On execution of the agreements, the petitioners have paid amount towards advance sale consideration to the respondent. However, as the respondent did not complete the apartment complex within the stipulated time, the petitioners demanded for refund of the advance amount paid by them. On such demand, the respondent along with his son Dhandapani, has issued three cheques for various denominations. The first such cheque was issued for Rs.30,000/- which was encashed by the petitioners. However, the rest of the two cheques for Rs.34,20,000/- and Rs.17,50,000/- were dishonoured for want of funds. Therefore, the petitioners have issued a legal notice on 02.01.2010 calling upon the respondent to pay the amount covered under the two cheques. The respondent also issued a reply notice dated 08.01.2010 repudiating the claim of the petitioners for payment of the amount covered under the cheques. Therefore, the petitioners have filed STR Nos. 613 and 638 of 2010 under Section 138 of The Negotiable Instruments Act on 27.01.2010 in which summons have been sent to the respondent. Thereafter, on 05.05.2010, the respondent has filed the instant complaint under Section 200 of Cr.P.C, which according to the petitioners, was filed only to pre-empt the petitioners from proceeding with the cases filed in STR Nos. 613 and 638 of 2010 under Section 138 of The Negotiable Instruments Act.

16. In this context, the reply notice dated 08.01.2010 of the respondent requires to be considered. In the reply notice, it was stated by the respondent that the cheques were issued by him in favour of the petitioners towards security. It is specifically stated in para No.17 of the reply notice dated 08.01.2010 that "But

unauthorisedly, deceptively with fraudulent intention, you received 7 blank cheques belonging to ICICI Bank, Pondy Main Branch, I.O.P. Lawspet Branch and State Bank of India, Thattanchavady Branch from my client as a security purpose of all the vendees including your client and possessed by your client. In addition, your client got 5 sets each set containing 2 blank promisory notes, 2 non-judicial stamp papers and 2 blank letter papers all of them were signed by my client. All the blank signed documents are in the possession of your client". This allegation made in the reply notice dated 08.01.2010 of the respondent is totally contradictory to the averments made in the instant private complaint, wherein the respondent has alleged that the cheques in question have been stolen by the petitioners when they visited his house on 25.11.2009. It is further alleged in the present complaint that on 10.12.2009 the petitioners have threatened the respondent by stating that they are in possession of the blank cheques signed by him and they would initiate proceedings invoking Section 138 of The Negotiable Instruments Act. In the very same reply notice dated 08.01.2010, the respondent agreed that one of the cheques for Rs.30,000/- was encashed by the petitioners. According to the respondent, this cheque for Rs.30,000/- was issued by him towards penalty for the delay in making the payment of interest to the petitioners. Therefore, the theory of the respondent that the cheques were stolen from his house by the petitioners is unbelievable.

17. As far as the petitioners are concerned, they have instituted STR Nos. 613 and 638 of 2010 under Section 138 of The Negotiable Instruments Act. Notwithstanding the filing of STR Nos. 613 and 638 of 2010 against the respondent for having issued the cheques in question without sufficient funds to honour the same, they have also filed O.S. No. 15 of 2010 on the file of the learned Principal District Judge, Villupuram against the respondent and his son for recovery of money covered under the two cheques which were dishonoured. After successive transfer of the suit, lastly it was transferred and re-numbered as O.S. No. 1 of 2014 and pending on the file of the learned Principal District Judge, Cuddalore. The second petitioner filed separate suit in O.S. No. 4 of 2012 before the learned Principal District Judge, Villupuram and it was subsequently transferred to the file of the learned Principal District Judge, Cuddalore and re-numbered as O.S. No. 29 of 2014 which was filed praying for specific performance

of the sale agreement the respondent entered into with her.

18. It is seen from the records that the petitioners herein have also filed CRP (PD) No. 2866 of 2014 before this Court praying to issue appropriate direction to the III Additional District Judge, Kallakurichi to dispose of the unnumbered IA No. of 2014 in O.S. No. 1 of 2014 and consequently, pass suitable orders in the suit within a time to be stipulated by this Court. The respondent also filed Tr.CMP No. 569 of 2014 praying to transfer the suit in OS No. 1 of 2014 from the file of the III Additional District Judge, Kallakurichi and to transfer the same to any other District Court in Cuddalore District and to decide the matter on merits. Both the CRP (PD) No. 2866 of 2014 and Tr.CMP No. 569 of 2014 were disposed of by this Court by a common order dated 18.09.2014. As per the order dated 18.09.2014, the suit in OS No. 1 of 2014 stood transferred to the file of learned Principal District Court, Cuddalore with a direction to dispose of the unnumbered IA No. of 2014 within a period of one month from the date of receipt of the records.

19. In the suit filed by the first petitioner, being O.S. No. 1 of 2014, a compromise memo was filed on 29.04.2013 and it was duly recorded by the civil Court. This compromise memo was marked as an exhibit in the suit filed by the second petitioner herein in O.S. No. 4 of 2012. Thus, it is evident that the compromise memo was duly acted upon and it was filed as a document in the suit filed by the second petitioner to bring an end to the litigation between the parties. As per the compromise memo, the respondent agreed to pay Rs.66,00,000/- to the petitioners even though their claim in both the suits is for Rs.93,65,240/-. However, as per the compromise memo, the respondent did not honour the payment schedule. Rather, the respondent has filed an application to strike down the compromise entered into with the petitioners by contending that the compromise was entered into out of duress and coercion. It is pertinent to mention that this application was filed on the last date of expiry of the time stipulated in the compromise memo dated 29.04.2013 for payment of the amount. The civil court refused to entertain the application and dismissed it on 03.01.2014. As against the same, the respondent has filed CRP No. 3498 of 2014, however, it was dismissed as withdrawn on 12.11.2014.

20. It is the specific contention of the learned senior counsel for the petitioners that the present private complaint has been filed belatedly. Further, the private complaint was filed as an off-shoot to the proceedings initiated by the petitioners under Section 138 of The Negotiable Instruments Act in STR Nos. 613 and 638 of 2010 which were filed on 27.01.2010. It is specifically contended that the private complaint was filed on 05.05.2010 much after receipt of notice in the proceedings initiated under Section 138 of The Negotiable Instruments Act. In this context, once again, the reply notice dated 08.01.2010 of the respondent to the statutory notice requires to be examined. In para No.34 of the reply notice, it was specifically contended that if the blank signed cheque issued for security is used as a genuine, it would amount to forgery under Section 471 of IPC. Thus, there is an indirect admission that the cheques in question were issued as a security in the reply notice dated 08.01.2010, however, contrary to the same, in the private complaint, it was stated that the cheques were stolen by the petitioners from his house. Therefore, it is clear that the present private complaint has been filed by the respondent as a counter-blast to the proceedings initiated in STR Nos. 613 and 638 of 2010 filed by the petitioners. Further, the delay in filing the private complaint also to be considered. Admittedly, the parties are under loggerheads, while so, the allegation that on 25.11.2009 the petitioners have come to the house of the respondent and stolen the cheques in question cannot be accepted. Even otherwise, the respondent in the private complaint alleged that on 10.12.2009, the petitioners threatened them over phone that they are in possession of the stolen cheques and would initiate criminal proceedings against him. However, immediately thereafter, the respondent did not file the private complaint, rather, he waited till 05.05.2010 to institute the present private complaint. This delay, in my opinion, would strengthen the averment of the petitioners that the instant private complaint has been filed only after receipt of the notice in STR Nos. 613 and 638 of 2010 and to pre-empt the petitioners from proceeding with the said cases.

21. With this background, it has to be considered whether the petitioners are entitled for discharge from the criminal prosecution at the instance of the respondent. It is settled position of law that for consideration of an application for discharge, upon consideration of the materials made available on record, if it is shown that there is no sufficient ground for proceeding against the accused, then

the accused is entitled for discharge. However, it is not for the Court to analyse all the materials, including pros and cons, reliability or acceptability of the material evidence for the purpose of discharge. When the prosecution is unable to prove, through statement and/or records, about the guilt of the accused, then the Court can conclude that there is no prima facie case made out against the accused to subject him to criminal prosecution. This was the view taken by the Honourable Supreme Court in *Union of India vs. Prafulla Kumar*, 1979 (3) Supreme Court Cases 4, as well as in the decision rendered in *Dilavar Balu Kurane vs. State of Maharashtra* (2002) 3 SCC 135 wherein it was categorically held that the Judge, while framing the charge under Section 227 is having power to fix and weigh the evidence for the limited purpose of finding out whether a prima facie case is made out against the accused or not. It was further held that whether while considering the question of framing the charge. If it is found that the evidence adduced by the prosecution gave rise to suspicion, then the Court is fully justified to discharge the accused in exercise of its power under Section 227 or 228 of Cr.P.C.

22. In the present case, there are abundant materials made available to show that the instant private complaint filed by the respondent is an off-shoot and a counter-blast to the proceedings initiated by the petitioners under Section 138 of The Negotiable Instruments Act. First of all, there is a delay in filing the private complaint, which was not properly explained by the respondent. The private complaint was filed by the respondent only after the notices in STR Nos. 613 and 638 of 2010 were served on him. Further, in the reply notice dated 08.01.2010 and the averments in the present complaint, the respondent has taken contradictory stand as regards the manner in which the cheques in question came to be in possession of the petitioners. Further, a compromise memo was arrived at between the parties on 29.04.2013 which was duly recorded in the suit filed by the first petitioner herein in O.S. No. 1 of 2012. The compromise memo was also marked as a document in the suit filed by the second petitioner in O.S. No. 4 of 2012. However, when the period stipulated in the compromise memo for payment of money came to an end, the respondent filed a petition to reject the compromise on the ground that it was made out of duress and compulsion and it was not voluntary. If these aspects have been taken into consideration, it could easily be concluded that the instant private complaint filed by the respondent, which mainly

relates to the issuance of cheques in question in favour of the petitioner, which were already adjudicated and ended in a compromise, is legally not sustainable and the petitioners need not be subjected to the ordeal of trial in such private complaint filed by the respondent. There is no prima facie case made out by the respondent in the private complaint against the petitioners for adjudication by the trial court.

23. In this context, useful reference can be made to the decision of the Honourable Supreme Court in the case of Sunil Kumar vs. M/s. Escorts Yamaha Motors Limited and others reported in AIR 2000 SC 27 wherein it was held by the Honourable Supreme Court that the first information report was registered only to pre-empt the filing of the criminal complaint against the information under Section 138 of the Negotiable Instruments Act. Applying the ratio laid down by the Honourable Supreme Court to the facts of this case, it can be concluded that the present private complaint has been designed and engineered by the respondent to pre-empt the petitioners from proceeding further with STR Nos. 613 and 638 of 2010 filed by them under Section 138 of The Negotiable Instruments Act especially the averments based on which the private complaint has been filed is contrary to the earlier stand taken by him in the reply notice dated 08.01.2010.

24. The learned Senior counsel for the petitioners relied on the decision of the Honourable Supreme Court rendered in Eicher Tractor Limited and others vs. Harihar Singh and another) (2008) 16 Supreme Court Cases 763 to contend that exercise of powers under Section 482 of Cr.P.C. to quash a criminal proceedings is the exception and not the Rule. In dealing with a case where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced is clearly or manifestly fails to prove the charge, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made. It is further held that the Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing the process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person. It was further held that where a criminal proceeding is manifestly attended with mala fide and/or where

the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, the Court can, as a measure of preventing abuse of process of law, exercise its power to quash a criminal proceedings pending before the Courts subordinate to it. In para Nos. 7 to 9 of this decision, it was held as follows:-

"7. In R.P. Kapur vs. State of Punjab [AIR 1960 sc 866] this Court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings:

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

8. In dealing with the last case, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt, should not be an instrument of oppression or needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to

cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in *State of Haryana v. Bhajan Lal* [1992 Supp (1) SCC 335]. A note of caution was, however, added that the power should be exercised sparingly and that too in the rarest of the rare cases. The illustrative categories indicated by this Court are as follows: (SCC pp. 378-79, para 102) "(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

9. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In proceedings instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at

the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceedings.

25. Applying the ratio laid down by the Honourable Supreme Court in the above decision, in this case, the allegations made by the respondent in the private complaint gives an impression that they are made only to pre-empt the petitioners from proceeding with the complaints filed by them under Section 138 of The Negotiable Instruments Act and to harass them. Therefore, when the proceedings initiated by the respondent is found to be vexatious and without any material evidence, the petitioners are entitled to be discharged.

26. As regards M.P. No. 2 of 2014 in CrI.RC SR No. 53356 of 2013 and M.P. No. 1 of 2014 in CrI.RC SR No. 321 of 2014, the reasons adduced for condonation of delay is not satisfactory. When there are litigations pending between the petitioners and the respondent, the respondent ought to have been vigilant in asserting his right to question the common order dated 26.02.2013 passed by the learned Judicial Magistrate No.II, Puducherry at the earliest point of time. It is not the case of the respondent that he was not aware of the order dated 26.02.2013 passed by the criminal Court, but he has stated to have entrusted a new counsel to file the present case. Such an averment has been made without any basis or material evidence to substantiate the same. In any event, the reasons adduced for condonation of the delay is not convincing and I do not see any reason to condone the delay.

27. In the result, the Order dated 04.02.2013 passed in CrI.M.P. No. 2779 of 2012 in C.C. No. 73 of 2012 on the file of the Judicial Magistrate No.II, Puducherry is set aside. The Criminal Revision Case is allowed. Resultantly, CrI.M.P. No. 2779 of 2012 in C.C. No. 73 of 2012 on the file of the Judicial Magistrate No.II, Puducherry stands allowed and the petitioners are discharged. Consequently, M.P. No. 2 of 2014 in CrI.RC SR No. 53356 of 2013 and M.P. No. 1 of 2014 in CrI.RC SR No. 321 of 2014 are dismissed.

