

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2015

CORAM

The Hon'ble Mr. Justice R.S.Ramanathan

Crl.O.P.No.7421 of 2010

and

M.P.No.1 of 2010

Dr.N.Manivannan
Managing Director of
Mahatma Modern Farm.

...Petitioner

vs.

K.Sivakumar

...Respondent

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code to call for records relating to the case in S.T.C.No.686 of 2009, on the file of the Judicial Magistrate No.II, Chidambaram, and to quash the same.

For Petitioner : Mr.S.Swamidoss Manokaran

For Respondent : Mr.R.Sethuvarayar

O R D E R

The petitioner is the accused in S.T.C.No.686 of 2009, on the file of Judicial Magistrate No.II, Chidambaram.

2. The respondent/complainant filed the abovesaid case against the petitioner, for offence under Section 138 of Negotiable Instruments Act, and this Petition is filed to quash the same.

3. The learned counsel appearing for the petitioner has submitted that, even according to the averments in the complaint, the petitioner is the Head of Mahatma Modern Farm, a Partnership Firm, and towards the amount payable by the said Firm, cheque was issued by the petitioner, and that was dishonoured, and after issuing statutory notice, the case was filed. The learned counsel, therefore, submitted that when the amount was payable by Mahatma Modern Farm, without impleading the said Partnership Firm, prosecution against the petitioner in his individual capacity is not maintainable, and on this ground, the complaint is liable to be quashed. The learned counsel also relied upon the judgement reported in (2012) 5 S.C.C. 661 in re (Aneeta Hada Vs. Godfather Partners and Tours Pvt. Ltd.) in support of his contention.

4. I am unable to accept the contentions of the learned counsel appearing for the petitioner. No doubt, in the complaint, it has been stated that the petitioner is the Head of the Mahatma Modern Farm. It is also seen that the respondent/complainant entered into an agreement with the petitioner for purchase of 10 Pairs of Emu cocks for a sum of Rs.2,00,000/-, and the petitioner did not supply EMU cocks, as per the agreement, and therefore, when the respondent/complainant demanded return of Rs.2,00,000/-, the petitioner issued a cheque for the said sum drawn on ICICI Bank, Salem Branch. It is seen from the cheque that it was signed by the petitioner in his individual capacity and he has not signed the cheque either on behalf of the said Firm, or as a Partner, or Head of the Firm. Therefore, when the cheque was issued by the petitioner in his individual capacity, and when the same was dishonoured, notice has to be sent only to the Drawer of the Cheque, and it is admitted that notice was sent to the Drawer of the cheque, viz., the petitioner herein, towards liability, and therefore, offence has been made out.

5. In the judgement rendered by the Hon'ble Supreme Court in Aneeta Hada's case, it has been held that, when the cheque was issued by Company or by Partnership Firm, without impleading the Company or Partnership Firm, its partners cannot be made liable, and Directors or Partners are vicariously liable only when the Company is made party to the proceeding. In this case, as stated supra, facts are different. Though liability was said to be that of Mahatma Modern Farm, the petitioner issued the cheque in his individual capacity, and the same was dishonoured when presented, and therefore, prosecution was launched against the petitioner, and I do not find any infirmity in the same.

6. In the result, the Criminal Original Petition is dismissed. Consequently, connected M.P. is closed.

s/d-

Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

To

1. The Judicial Magistrate No.II,
Chidambaram,
2. -do- thro' The Chief Judicial Magistrate,
Cuddalore

3. The Section Officer,
Criminal Section,
High Court, Madras 104.

+ 1 cc to Mr.R.Sethuvarayar, Advocate SR 26981

kgk(co)
prk10/7

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