

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.06.2015

CORAM

THE HON'BLE MR. JUSTICE R.S.RAMANATHAN

Crl.O.P.No.6739 of 2010
and
M.P.No.1 of 2010

G.N.Rajan Babu

...Petitioner

vs.

L.Rathinakumar

...Respondent

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code to call for records relating to the proceedings in C.C.No.227 of 2009, on the file of Judicial Magistrate No.IV, Vellore and to quash the same.

For Petitioner : Mr.G.Jeremiah

For Respondent : Mr.T.Martin

for Mr.R.Tholkappian

O R D E R

The accused in C.C.No.227 of 2009 on the file of the Judicial Magistrate No.IV, Vellore is the petitioner. The respondent filed the private complaint u/s.138 Negotiable Instruments Act and this petition is filed to quash the said complaint.

2. It is submitted by the learned counsel for the petitioner that the cheque was issued by the partnership firm Nagas International, signed by the partner Rajan Babu in favour of Roopam Arts. But the complaint was filed by the respondent Rathina Kumar against G.N.Rajan Babu without impleading the partnership firm. He, therefore, submitted that having regard to the judgement of the Supreme Court in Aneeta Hada Vs. M/s.Godfather Travels and Tours Pvt. Limited reported in 2012(2) RCR (Criminal) 854, without impleading the partnership firm, the partner cannot be made liable for the cheque issued by the partnership firm. He also submitted that in the complaint nothing has been stated about the connection between the Roopam Arts and the complainant Rathina Kumar and the payee is Roopam Arts. The complaint given by Rathina Kumar is not maintainable. On this ground, the learned counsel for the petitioner prayed for quashing the complaint.

3. The learned counsel for the respondent submitted that the payee of the cheque is Roopam Arts and the respondent Rathina Kumar is the proprietor of the firm and therefore, he has filed the complaint in his name and the Proprietor concern is no way responsible and therefore, the complaint filed by the proprietor Rathina Kumar is appropriate. He also submitted that the partnership firm was not impleaded as one of the parties. Admittedly, the petitioner has signed the cheque and therefore, he is liable to be prosecuted and therefore, the contention of the learned counsel for the petitioner cannot be accepted.

4. I am unable to accept the contention of the learned counsel for the respondent. It is seen from the cheque that the payee is Roopam Arts and the cheque was issued by the partnership firm partner Rajan Babu, the petitioner herein. In the complaint, it has not been stated that the respondent is the proprietor of Roopam Arts or a holder in a due course of the said cheque issued in favour of Roopam Arts or the respondent is an endorsee. Therefore, in the absence of particulars given in the complaint, the lower court ought not to have taken cognizance of the complaint as the complainant has no locus standi to present the complaint and on that ground the complaint is liable to be dismissed. Further as per the judgement referred to above, when a partnership firm or a company has issued a cheque, the partnership firm or the company have to be impleaded as one of the accused and thereafter only individual partners or directors can be made liable. It is seen from the cheque that cheque was issued by the partnership firm and the petitioner has signed as a partner. Admittedly, the partnership firm was not impleaded as accused and therefore, in the absence of partnership firm, individual partner cannot be made liable, even if that individual partner has signed the cheque. On that ground also, the petition is liable to be allowed.

5. In the result, the complaint in C.C.No.227 of 2009 is quashed. Consequently, connected miscellaneous petition is closed.

vrc

s/d-

Deputy Registrar(J)

True Copy

Sub-Assistant Registrar

To
The Judicial Magistrate No.IV
Vellore.

+ 1 cc to Mr.R.Tholkapian, Advocate SR 26216

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