

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2015

Coram

THE HONOURABLE MR. JUSTICE R.S.RAMANATHAN

CrI.O.P.No.18412 of 2009

and

M.P.No.1 of 2009

1.M/s Glass King,
Rep.by its Managing Partner T.Sridhar Nair,
Anand Building 1st Floor,
17/1646A, Pavamani Road,
Calicut, Kerala.

2.T.Sridhar Nair,
Managing Partner-M/s Glass King,
Anand Building 1st Floor,
17/1646A, Pavamani Road,
Calicut, Kerala.

..Petitioners

/vs/

M/s Asahi India Glass Limited
Rep.by its Executive Officer(F&A)
Mr.N.Ranganathan,
2C Ruby Regency, 1st Floor,
No.69, Anna Salai, Dinrose Estate,
Chennai 600 002.

..Respondent

Prayer:

Criminal Original Petition filed under Section 482 of Criminal Procedure Code praying to call for the records of the case in C.C.No.3946 of 2008 pending on the file of the VII Metropolitan Magistrate, George Town, Chennai and quash the same.

For Petitioners : Mr.C.Rajan
For Respondent : Mr.A.Tamilvanan

ORDER

The accused in C.C.No.3946 of 2008 on the file of VII Metropolitan Magistrate, George Town, Chennai, are the petitioners.

2.It is submitted by the learned counsel for the petitioners that a cheque was issued by the partnership firm namely, M/s Glass

King, represented by its partner viz., T.Sridhar Nair and the same was dishonoured and the cheque No.001714, dated 27.11.2007 was drawn on State Bank of Travancore. He further submitted that notice was issued to the proprietary concern viz., M/s Glass King represented by T.Sridhar Nair describing himself as Proprietor, nevertheless, the prosecution was initiated against the partnership firm represented by its partner viz., T.Sridhar Nair as Managing Partner of M/s Glass King. He therefore, submitted that notice was not issued to the drawer of the cheque as the drawer of the cheque was a partnership firm namely, M/s Glass King and the notice was issued to the Proprietary concern M/s Glass King and there is no valid notice. He also submitted that even though notice was issued to the Proprietary concern, the prosecution was launched against the partnership firm and its partner and therefore, the complaint is liable to be quashed.

3.It is submitted by the learned counsel for the respondent that even though the cheque was signed by the partnership firm represented by its partner viz., T.Sridhar Nair as a signatory to the cheque and in the capacity of the partner, he is liable to pay the amount. He further submitted that the petitioners informed the respondent by letter dated 05.07.2006 that M/s Glass King was no longer a partnership firm and has become a Proprietary concern and Mr.T.Sridhar Nair was the Proprietor. Therefore, even though the cheque was issued by the partnership firm concern as the partnership firm became a proprietary concern, notice was issued to the proprietary concern and therefore, there was valid notice. He further submitted that even though the prosecution was initiated against the partnership firm, arraying the firm as first accused, the second accused was T.Sridhar Nair in his individual capacity, who signed the cheque as a partner and he was also personally liable for issuance of cheque and therefore, the prosecution as against the second petitioner namely, T.Sridhar Nair cannot be quashed.

4.I am unable to accept the contention of the learned counsel appearing for the respondent. Admittedly, the cheque was issued by the partnership firm namely, M/s Glass King represented by its partner namely, T.Sridhar Nair. If he accepts the case of the respondent/complainant that the partnership firm has become a proprietary concern as per the letter given by the petitioners and therefore, notice was issued to the proprietary concern and notice was a proper notice, the prosecution should not have been launched against the partnership firm and its partner. It is seen from the complaint that the first accused is the partnership firm represented by its partner and the second accused T.Sridhar Nair, Managing Partner of the partnership firm. It is also seen from the averments made in the complaint that nothing has been stated about the partnership firm becoming proprietary concern or in what way, the second accused was made responsible, whether as a partner or a proprietor or as a person, who signed in his individual capacity.

5. Therefore, having issued a notice to the proprietary concern, knowing well fully the cheque was issued by the partnership firm and the prosecution was launched against the partnership firm and its partner, it cannot be stated that the prosecution was launched against proper person. If the arguments of the learned counsel for the respondent were to be accepted, either there was no proper notice, or there was no proper initiation of complaint against the proper person, this petition is to be allowed.

6. Accordingly, this criminal original petition is allowed and the proceedings in C.C.No.3946 of 2008 on the file of the VII Metropolitan Magistrate, George Town, Chennai is quashed in so far as the petitioners are concerned. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

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To

1. The VII Metropolitan Magistrate,
George Town,
Chennai.

2. Do- Thro The Chief Metropolitan Magistrate, Egmore, Chennai-8.

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

1 cc to Mr..C.Rajan , Advocate Sr.No.27957/11.

1 cc to Mr.A.Tamilvannan , Advocate Sr.No.27854

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