IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2015

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

Crl.O.P.No.28277 of 2009 and
M.P.No.1 of 2009

Alex Kennedy ...Petitioner (Accused 1)

vs.

1. S.Durai Kumar
2. Jayanthi Saravanan ...Respondents
(Complainants/ Accused 2)

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code to call for records relating to the case in C.C.No.124 of 2009, on the file of the Judicial Magistrate No.III, Erode, and to quash the same.

For Petitioner : Mr.S.Dhanasekaran

O R D E R

The first accused in C.C.No.124 of 2009, on the file of Judicial Magistrate No.III, Erode, is the petitioner herein, and this Petition is filed to quash the same.

2. The learned counsel appearing for the petitioner has submitted that the petitioner has been arrayed as accused No.1, as stated above, and it has been stated in the complaint that accused Nos.1 and 2 issued a cheque, bearing No.122148, towards the discharge the loan payable by them, and the said cheque was returned with an endorsement "Funds Insufficient". The learned counsel further submitted that Account No.0739301000022164 is maintained by the second accused, Jayanthi Saravanan, and the cheque bearing No.122148, referred to in the complaint was issued from her account and the same was dishonoured and the Bank Statement filed by the petitioner along with typed-set of papers would prove that the cheque was signed only by the second accused and the account also stands in her name, and therefore, the petitioner is neither the drawer of the cheque nor the endorsee, and therefore, he cannot be prosecuted.

3. I am unable to accept the contentions of the learned counsel appearing for the petitioner. As stated supra, in the complaint, it has been stated that the accused Nos. 1 and 2 issued the cheque towards the discharge of the loan. The learned counsel for the petitioner only produced the Bank statement and certificate issued by the Bank with Account No.0739301000022164, standing in the name of the second accused/Jayanthi Saravanan, but

the copy of the cheque was not filed along with the typed-set of papers. Therefore, the question, whether the petitioner was Signatory or Drawer of the cheque is not known, and hence, it cannot be concluded at this stage that the petitioner was not drawer of the cheque, and therefore, he cannot be prosecuted. No doubt, if the cheque was not signed by the petitioner, he cannot be prosecuted under Section 138 of Negotiable Instruments Act. However, the petitioner is not able to give particulars regarding the person, who has signed the cheque. In my opinion, by producing certificate from the Bank with the account maintained by the second accused alone will not absolve the petitioner from liability, without producing the copy of the cheque. Hence, it is open to the petitioner to prove during trial that he was not the drawer of the cheque, and therefore, he could not be prosecuted, and at this stage, the Court cannot presume such things.

4. In the result, the Criminal Original Petition is dismissed and liberty is given to the petitioner to prove that he was not the drawer of the cheque during trial. The Trial Court is directed to dispose of the case in C.C.No.124 of 2009, within a period of four months from the date of receipt of a copy of this order. Consequently, connected M.P. is closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

sd

To

1. The Judicial Magistrate No.III, Erode,

2. Do thro the Chief Judicial Magistrate
Erode

1 cc to Mr.S.Dhanasekaran, Advocate, sr. 27711

Crl.O.P.No.28277 of 2009

RJ (CO)
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