

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP No.16019 of 2016
and Crl.M.P.No.7818 of 2016

K.Palaniswami

.. Petitioner

-VS-

1.M/s.Yoshiaki Chemicals Co. (P) Ltd.
Rep. By its Director, S.Sobramanien.

2.M/s.M.P.Shan Tex Pvt. Ltd.,
Rep. By its Managing Director,
K.Palaniswami.

3.P.Uma Shankar
4.S.Uma Maheswari

.. Respondents

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C.,
to call for the records of the proceedings in C.C.No.441 of 2015 on
the file of Fast Track Court, Judicial Magistrate No.1, Tiruppur and
quash the proceedings against the petitioner.

For Petitioner : Mr.M.Easan

For Respondents : Mr.K.Myilsamy for R-1

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ORDER

This Criminal Original Petition has been filed seeking a direction to call for the records in C.C. No.441 of 2015 on the file of Fast Track Court, Judicial Magistrate No.1, Tiruppur, and to quash the proceedings against the petitioner.

2.For the sake of convenience, the parties are referred to as the complainant and accused.

3.It is the case of the complainant that they are into the business of dyeing and processing garment fabric and related items and that they had supplied dyeing dyes and chemicals to M/s.M.P.Shan Tex Private Limited (A-1), towards which a sum of Rs.80,97,394/- is due from the latter. Towards discharge of this liability, M/s.M.P.Shan Tex Pvt. Ltd. issued two cheques signed by Mr.P.Uma Shankar (A-3) drawn on HDFC bank for Rs.10,00,000/- each, which when presented by the complainant were dishonoured for insufficiency of funds. The complainant issued a statutory notice dated 24.04.2013 to M/s.M.P.Shan Tex Pvt. Ltd. (A-1) and other accused including the petitioner herein. Since the accused did not

make payment, the complainant launched the prosecution against the accused for an offence under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the N.I. Act'), which is pending in C.C.No.441 of 2015 before the Fast Track Court / Judicial Magistrate No.1, Tirupur, challenging which K.Palanisamy (A-2) is before this Court.

4.Heard Mr.Easan, learned counsel for the petitioner / A-2 and Mr.Myilsamy, learned counsel for the first respondent / complainant.

5.Mr.Easan, learned counsel, submitted that K.Palaniswami is not even a Director in M/s.M.P.Shan Tex Pvt. Ltd. and much less its Managing Director as categorised by the complainant in the complaint, but whereas he is only a shareholder. In support of this contention, Mr.Easan, learned counsel, produced the Memorandum of Association of M/s.M.P.Shan Tex Pvt. Ltd., which shows that K.Palaniswami is only a shareholder holding 10000 equity shares. It is also seen that one Uma Shankar is the Managing Director and the other Director is Suganthi.

6.Mr.Myilsamy, learned counsel appearing for the first respondent / complainant submitted that when the statutory notice was issued by the complainant, K.Palaniswami (A-2) received it and did not reply and therefore, he cannot now contend in the quash petition that he is only a shareholder. That apart, Mr.Myilsamy contended that there are enough averments in the complaint to fasten criminal liability on K.Palaniswami (A-2) with the aid of Section 141 of the N.I. Act.

7.On a thorough perusal of the complaint, the complainant has proceeded as if K.Palaniswami is the Managing Director of M/s.M.P.Shan Tex Pvt. Ltd., but whereas unimpeachable records show that it is Uma Shankar (A-3) who is the Managing Director and the signatory of the impugned cheques. In such circumstances, this Court is of the view that the prosecution of K.Palaniswami (A-2), who is only a shareholder in the company, without anything more, is an abuse of process of law.

8.Accordingly, this petition is allowed and the proceedings in C.C.No.441 of 2015 on the file of Fast Tract Court, Judicial Magistrate No.1, Tiruppur, as against K.Palaniswami / A-2 is alone

quashed. The trial Court is directed to proceed further with the trial and complete the same preferably within a period of six (6) months.

9.The trial Court is further directed to obtain a bond under Section 88 Cr.P.C. for a sum of Rs.5,000/- (Rupees five thousand only) with two sureties from the other accused, as laid down by the Hon'ble Supreme Court in **Indian Bank Association and others vs. Union of India and others, (2014) 5 SCC 590**. Consequently, connected Crl.M.P. is closed.

24.08.2016

Index : Yes/No
Internet : Yes/No
sra

To

1. The Judicial Magistrate No.1,
Fast Track Court, Tiruppur
2. The Public Prosecutor,
High Court, Madras.

P.N.PRAKASH, J.

(sra)

CrI.OP No.16019 of 2016

24.08.2016