

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP No.11786 of 2016
and Crl.M.P.Nos.6019 and 6020 of 2016

Malka Komariah ..Petitioner/Accused-7

S.Srinivasan Vs
.. Respondent/Complainant

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in STC No.6 of 2016 on the file of the learned Judicial Magistrate, Fast Track Court, Magisterial Level, Tiruvallur and quash the same.

For Petitioner : Mr.M.Mohamed Rafi

For Respondent : Mr.I.Subramaniam,
Senior Counsel
for Mr.Prasad Vijayakumar

O R D E R

This petition has been filed to call for the records in STC No.6 of 2016 on the file of the learned Judicial Magistrate, Fast Track Court, Magisterial Level, Tiruvallur and quash the same.

2. Heard Mr.M.Mohamed Rafi, learned counsel for the accused and Mr.I.Subramaniam, learned Senior Counsel appearing for the complainant.

3. For the sake of convenience, the parties will be referred to as complainant and accused.

4. The complainant initiated prosecution in STC No.6/2016 before the Judicial Magistrate No.1, Tiruvallur against M/s Premier Energy & Infrastructure Limited and nine others, of whom the petitioner is ranked as the seventh accused, challenging which he is before this Court for quashing the prosecution as against him, on the short ground that he had resigned from the first accused Company as early as 31.03.2015, but whereas, the impugned cheque was issued by the Company pursuant to an agreement dated 25.04.2015 and the cheque was presented on 30.09.2015 and was dishonoured on 01.10.2015. Following the dishonour of the cheque, the

complainant issued a legal notice dated 09.10.2015, in response to which the accused gave a reply dated 05.11.2015 contending that, he had resigned from the Company as early as 31.03.2015 and therefore, he cannot be mulcted with criminal liability with the aid of Section 141 of the Negotiable Instruments Act.

5. The learned counsel for the accused brought to the notice of this Court FORM DIR-12, (the subsequent avatar of Form-32) and submitted that the same shows that the accused resigned from the Company on 31.03.2015.

6. Per contra, Mr.I.Subramaniam, learned Senior Counsel appearing for the complainant submitted that FORM DIR-12 form itself was filed with the Registrar of Companies on 26.10.2015 and therefore, the accused must be

construed to be part of the Management of the first accused Company when the agreement was entered into on 25.04.2015 and the impugned cheque dated 30.09.2015 was issued.

7. The judgments of the Supreme Court quashing the prosecution relying upon FORM 32 are a legion and requires no further expatiation. However, in all those cases it has been shown to the Court that FORM DIR-12 [Form 32] was filed with the Registrar of Companies prior to the issuance of the cheque by the Company. In this case, FORM DIR-12 was admittedly filed only on 26.10.2015 by the first accused Company and it was followed up by the accused, who himself filed FORM DIR-7 on 04.11.2015.

8. Learned counsel for the accused submitted that when the date of resignation of the accused from the Directorship of the first accused Company has been accepted as 31.03.2015 by the Registrar of Companies as well by the first accused Company, he is deemed to have been out of the affairs of the first accused Company on the relevant dates.

9. In the considered opinion of this Court, the acceptance of the date of resignation as 31.03.2015 by the Company may act as an estoppel as against the Company, but not as against the third parties, who have had transactions with the Company. These are all disputed questions of fact which can be determined only in the course of trial. That apart, the complainant has made the following averments in the complaint in paragraph 7:

"vii) That the Accused No.7 Malka Komaraiah, the Director of the First Accused Company and along with Accused nos.2,3,4,5,6,8 and 9 is in control of the affairs of the First accused Company and liable for all the acts and deeds committed by the First Accused Company and wholly responsible for the conduct

of the First Accused Company residing at Plot No.96, Dhanalakshmi Co-operative Society, Mahendra Hills, East Maredpally, Secunderabad 500 026, AP, having office at Premier Energy & Infrastructure Limited, Karunai Kudil, First Floor, No.226, Cathedral Road, Chennai 86, within this jurisdiction of 14th Metropolitan Magistrate Court and within the limit of Royapettah Police Station."

In the teeth of such allegations vis-a-vis the accused herein, this Court cannot interfere with the prosecution and quash the same. Hence, this petition is dismissed with liberty to the accused to raise all points before the trial Court. Consequently, connected miscellaneous petitions are closed. Whatever is stated above is only for the limited purpose of deciding this quash petition and the trial Court shall proceed without being influenced by the observations made herein.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gms

To

1. Judicial Magistrate, Fast Track Court,
Magisterial Level, Tiruvallur.

+ 1 cc to Mr.Prasad Vijayakumar, Advocate SR.37919

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