

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2016

CORAM

THE HONOURABLE MS.JUSTICE R. MALA

CRL.O.P.No.21191 of 2014

and

M.P.No.1 of 2014

Vanitha

.. Petitioner/A.3

... Vs ...

1. M/s. Casper Exports,
Represented by its Partner,
R.Udhyakumar,
S.F.No.135/5, Jeeva Nagar,
Murugampalayam Road,
Iduvampalayam Post,
Tiruppur. ... 1st Respondent/Complainant
2. M/s. Vanitha Traders,
Represented by its Partner,
Mr.K.Kumar,
No.28, Adhitya Mansion,
Sajjan Rao Circle,
V.V.Puram,
Bangalore-4. ... 2nd Respondent/Accused No.1
3. Mr.Kumar,
Partner of M/s. Vanitha Traders,
No.28, Adhitya Mansion,
Sajjan Rao Circle,
V.V.Puram,
Bangalore-4. ... 3rd Respondent/Accused No.2

Prayer:- Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to call for the records in C.C.No.413/2014 on the file of the learned Judicial Magistrate No.II, Tiruppur, and quash the same.

For Petitioner : Mr.K.Vignesh Karthick

For R-1 : Mr.K.Myilsamy

For RR-2 & 3 : Private notice served

ORDER

The petitioner, who is the third accused, has come forward with the present petition seeking to quash the proceedings in C.C.No.413/2014 pending on the file of the learned Judicial Magistrate No.II, Tiruppur, for an offence punishable under Section 138 of the Negotiable Instruments Act.

2. The learned counsel for the petitioner would submit that the first respondent has filed a private complaint against the petitioner/A.3 and A.1 and A.2 for an offence punishable under Section 138 of the Negotiable Instruments Act stating that the first accused is a partnership firm, in which, second and third accused are the partners. A.2 and A.3 have purchased banians and hosiery goods from the complainant company for improving the business of A.1 and they have not repaid the amount. As per the invoice mentioned in paragraph No.4 of the complaint, since the amount of Rs.5,13,958.70 was not repaid, the first respondent/complainant had made a demand. At that time, on behalf of first accused firm, A.2 had issued two cheques, which were presented for encashment and the said cheques were returned as "insufficient funds". After issuance of statutory notice, the complaint has been preferred by the first respondent/complainant. The learned counsel for the petitioner would further submit that the petitioner is not a partner of the first accused firm and there is no specific averment made as against the petitioner/A.3.

3. To substantiate his arguments, the learned counsel for the petitioner has relied upon a decision of the Hon'ble Supreme Court reported in (2014) 16 SCC page 1 [Pooja Ravinder Devidasani Vs. State of Maharashtra and another] and prays for quashing of the proceedings against the petitioner/A.3.

4. Resisting the same, the learned counsel appearing for the first respondent/complainant would submit that the petitioner is one of the partner of the first accused firm and the averments made in the complaint are sufficient to prosecute the petitioner/A.3. The learned counsel for the first respondent/complainant further submitted that as per the partnership Act, Form No.1 was not produced and hence, he prays for dismissal of the petition.

5. This Court has considered the rival submissions made on both sides and perused the records.

6. The document filed by the petitioner would show that the petitioner is not a partner of the firm. Form No.1 filed under Rule 3 of the Indian Partnership Act, 1932 would also reveal that the petitioner is not a partner of the firm. So, when the petitioner is not a partner of the firm, it is immaterial to decide whether any specific averment has been made against the

petitioner in the complaint. Further, once the petitioner/A3 is not a partner of the first accused firm, the entire proceeding against the petitioner is liable to be quashed and it is hereby quashed.

7. Accordingly, the entire proceedings in C.C.No.413 of 2014 pending on the file of the learned Judicial Magistrate No.II, Tiruppur, in respect of the petitioner alone is, hereby, quashed and this Criminal Original Petition is allowed accordingly. Consequently, the connected miscellaneous petition is closed.

8. At this juncture, the learned counsel for the first respondent/complainant wants an early disposal of the case. The learned Judicial Magistrate No.II, Tiruppur, is directed to dispose of the case in C.C.No.413/2014, within a period of three months from the date of receipt of a copy of this order.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

Jrl

To

The Judicial Magistrate No.II,
Tiruppur.

1 cc to Mr.K. Myilsamy, Advocate sr. 22842

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