

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP No.12567 of 2016 & Crl.M.P. No.6486 of 2016

1.Othisamy Nanjappa Gounder
2.Sivasamy Nanjappa Gounder
3.Ellapalayam Ramasamy Elango
4.Ellapalayam Palani Gounder Rajendiran..... Petitioners

Vs

E. Velu Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., for direction to call for the records in C.C. No.1598 of 2016 on the file of the Learned XVII Metropolitan Magistrate at Saidapet, Chennai insofar as the Petitioners / Accused 5,6,8 and 9 are concerned and to quash the same.

For Petitioners Mr.S. Kaithamalai Kumaran
For Respondent Ms. Sangeetha Rajkumar

ORDER

This Criminal Original Petition has been filed seeking a direction to call for the records in C.C. No.1598 of 2016 on the file of the XVII Metropolitan Magistrate Court at Saidapet, Chennai insofar as the Petitioners / Accused 5,6,8 and 9 and to quash the same.

2 Heard Mr. Kaithamalai Kumaran, learned counsel for the petitioners/accused and Ms. Sangeetha Rajkumar, learned counsel for the complainant.

3 For the sake of convenience, the parties will be referred to by their name.

4 It is the case of E. Velu (complainant) that C.A.V.Cotton Mills Private Limited (A1) had borrowed Rs. 2 crores in September 2015 and in discharge of the said liability, had issued four cheques dated 19.01.2016 for Rs.50/-lakhs each, which, when presented by Velu, were dishonoured. Velu issued a

statutory notice under Section 138 of the Negotiable Instruments Act, 1881 (for short "the NI Act") on 29.01.2016 and since C.A.V. Cotton Mills Pvt. Ltd.(A1), did not make the payment, he has launched a prosecution in CC No.1598/2016 before the XVII Metropolitan Magistrate Court, Saidapet, Chennai against C.A.V. Cotton Mills Pvt. Ltd. and 8 others, challenging which, Othisamy Nanjappa Gounder(A5), Sivasamy Nanjappa Gounder (A6), Ellapalayam Ramasamy Elango (A8) and Ellapalayam Palani Gounder Rajendiran (A9), are before this Court.

5 Mr. S. Kaithamalai Kumaran, learned counsel for the petitioners/accused submitted that the petitioners/accused had resigned from C.A.V. Cotton Mills Pvt. Ltd. way back on 15.02.2013 and in support of that, he produced Form 32.

6 Ms. Sangeetha Rajkumar, learned counsel for Velu submitted that at the time of availing the loan, C.A.V. Cotton Mills Pvt. Limited (A1) had issued the minutes, wherein, the names of these petitioners are shown as active Directors and in the teeth of such assertion, it is indeed a disputed question of fact as to whether they had resigned, as alleged by them now.

7 Be that as it may, on a close reading of the complaint filed by Velu, it is seen that the minimum averments that are required to fasten vicarious liability under Section 141 of the NI Act are absent. In the absence of even the minimum averments, I am afraid that this prosecution against these petitioners cannot be maintained.

In the result, this Criminal Original Petition is allowed and the proceedings against these petitioners in C.C. No.1598 of 2016 on the file of the XVII Metropolitan Magistrate Court, Saidapet, Chennai is hereby quashed. Connected CrI.M.P. is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1 The XVII Metropolitan Magistrate
Saidapet, Chennai

2 The Public Prosecutor
High Court of Madras
Chennai 600 104

+1 cc to M/s.A.K.Kumarasamy Advocate sr 47186
+1 cc to Mr.J.J.R.Edwin Advocate sr 47419

Crl.OP No.12567 of 2016

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