

THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18..10..2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Criminal Original Petition No.22968 of 2016
and
Crl.M.P.No.10766 of 2016

Karthikeyan ... Petitioner/Accused

-Versus-

Spydo Security Services,
Rep. by its Parner R.Rajendran
12/19, Dharmaraja Koil Street,
Kilpauk, Chennai 600 010.

... Respondent/Respondent

Petition filed under Section 482 of Cr.P.C. praying to call for the records in C.C.No.2175 of 2016 pending on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai, and to quash the said case.

For Petitioner : Mr.S.L.Sundarsanam

For Respondent(s) : Mr.C.Emalias, APP

ORDER

For the sake of convenience, the parties in this proceedings will be referred to by their respective name.

2. It is the case of Spido Security Services that they were engaged by Southern Academy of Maritime Studies to the latter's company in Chennai towards which a sum of Rs.3,00,000/- is due to them. In discharge of the said liability, it is alleged that, Southern Academy of Maritime Studies issued a cheque bearing No.001022 dated 18.01.2016 in favour of Spido Security Services which when presented was dishonored. Spido Security Services issued a statutory notice on 27.01.2016. Since payment was not made, a prosecution in C.C.No.2175 of 2016 has been launched before the XVIII Metropolitan Magistrate, Saidapet, Chennai, under Section 138 of the Negotiable Instruments Act and Section 420 of IPC against M/s.Southern

Academy of Maritime Studies represented by its Managing Director - Karthikeyan challenging which Mr.Karthikeyan is before this court.

3. Mr.S.L.Sudarsanam, the learned counsel appearing for Karthikeyan submitted that Karthikeyan is not the signatory of the cheque in question and that it has been signed by one A.R.Krishnamurthy for and on behalf of Southern Academy Maritime Studies and, therefore, Karthikeyan cannot be prosecuted. The learned counsel produced a copy of the cheque in question in support of his contention.

4. On a perusal of the cheque in question enclosed in the typed set of papers, it is seen that the signature of the executant is indecipherable. Of course, the cheque has been issued on the account held by Southern Academy Maritime Studies which is a juristic person and is also liable for prosecution under Section 138 of the Negotiable Instruments Act. Since the name of the signatory of the cheque is not clear, Spido Security has launched the prosecution on the bonafide belief that it is Karthikeyan who has signed the cheque. It may be relevant to state here that only Southern Academy of Maritime Studies has been shown as accused in the complaint and no one else has been shown nor prosecuted with the aid of Section 141 of the Negotiable Instruments Act. If Karthikeyan is not the signatory of the cheque in question he need not have any apprehension. When only the juristic person is made as accused in a criminal prosecution, sentence of imprisonment cannot be awarded to the person who is representing the juristic person.

5. Section 305 of (2) of Cr.P.C. states as follows:-

305. Procedure when corporation or registered society is an accused.-

(1)

(2) Where a corporation is the accused person or one of the accused persons in an inquiry or trial, it may appoint a representative for the purpose of the inquiry or trial and such appointment need not be under the seal of the corporation."

6. In the light of the above, this court is therefore of the considered view that it is always open to Southern Academy of Maritime Studies to appoint any person to represent them. Such person as stated above is only a representative of the juristic person and he cannot be convicted and sentenced personally for the offence. A petition can be filed under Section 305 (2) of Cr.P.C. by Southern Academy of Maritime

Studies before the trial court appointing any person to represent them in the prosecution.

7. In the result, this criminal original petition is closed with the above observation.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

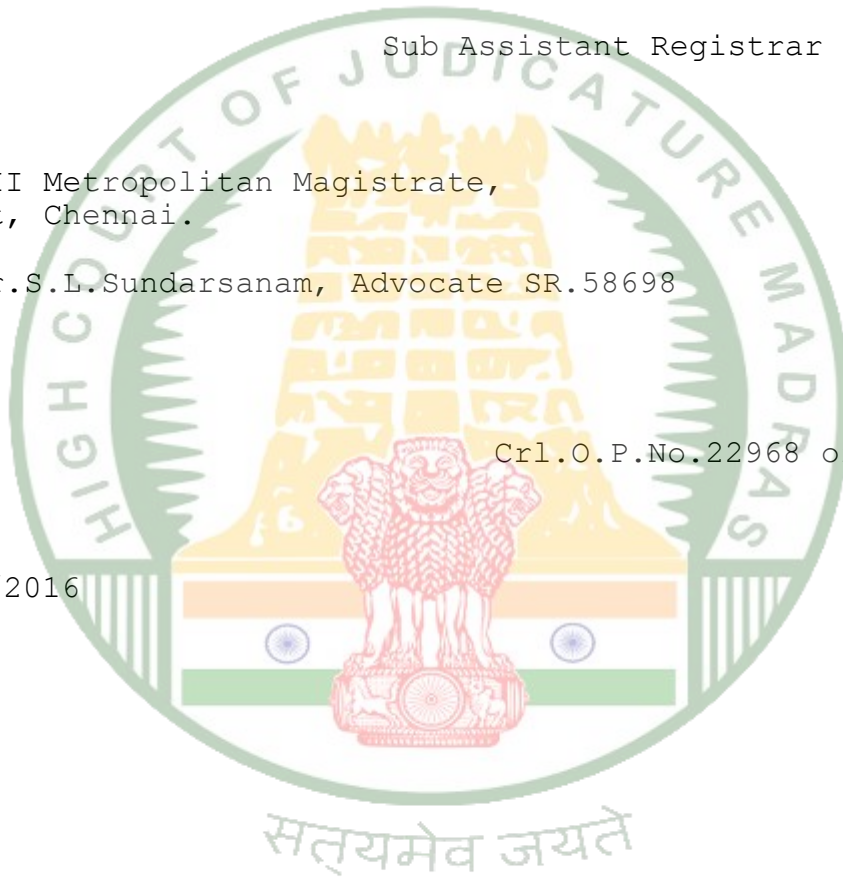
To

1.The XVIII Metropolitan Magistrate,
Saidapet, Chennai.

+lcc to Mr.S.L.Sundarsanam, Advocate SR.58698

Cr1.O.P.No.22968 of 2016

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