

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

Cr1.O.P.No.5860 of 2016

and

Cr1.M.P.No.3021 of 2016

Adaikala Raj Nirmala Bastiyan

W/o.Francis Bastiyan

... Petitioner/5th Accused

Vs.

M/s.Arihant Investment

Rep by its Partner

Mr.Jitendra Mehta

S/o.S.S.Mehta

... Respondent/Complainant

Prayer: Petition filed under Section 482 of Cr.P.C. to call for the records relating to C.C.No.1122 of 2015 pending on the file of the VIII Metropolitan Magistrate Court at George Town, Chennai and quash the same as against the petitioner/5th Accused by allowing the Criminal Original Petition.

For Petitioner : Mr.S.Karunamoorthy

For Respondent : Mr.S.Ramesh Kumar

O R D E R

Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

2. The petitioner has come forward with the present Criminal Original Petition seeking to quash the proceedings in C.C.No.1122 of 2015 pending on the file of the VIII Metropolitan Magistrate Court at George Town, Chennai.

3. The learned counsel appearing for the petitioner would submit that the respondent herein has preferred a complaint against the petitioner for the offences punishable under Section 138 of the Negotiable Instruments Act. The allegation against the petitioner is that the petitioner as the Director of the first accused company had issued a cheque dated 16.07.2015 for a sum of Rs.6,00,000/-, which when presented for encashment was returned as 'excess arrangement'. Hence,

the respondent issued a statutory notice under Section 138 of the Act, but the same was returned as unclaimed. So, the respondent was constrained to prefer a complaint.

4. The learned counsel appearing for the petitioner would further submit that the petitioner who is arrayed as 5th accused has come forward with the present application for quash on the ground that as on the date of issuance of the cheque dated 16.07.2015, she was neither the Managing Director nor the Director of the first accused company and that she has resigned from the Directorship of the company on 01.12.2014 itself. The said factum was also proved by way of filing Form 12, wherein it was stated that the petitioner has resigned with effect from 01.12.2014. Thus, as on the date of the issuance of the cheque, the petitioner is not the Director as alleged by the respondent. Hence, the learned counsel for the petitioner prayed to quash the proceedings.

5. Resisting the same, the learned counsel appearing for the respondent would submit that during the course of the business transaction, the petitioner was one of the Director of the Company and so, the respondent had parted with Rs.30,00,000/- on 12.09.2014. Even at the time of the borrowal, the accused paid the 10 months interest of Rs.3,37,500/- in advance and agreed to pay the principal sum of Rs.30,00,000/- in 10 equated monthly installments of Rs.3,00,000/- per month and also issued 10 post dated cheques. Since certain cheques were not honoured, the accused issued a cheque dated 16.07.2015 for a sum of Rs.6,00,000/-, however the same was dis-honoured for the reason 'exceeds arrangement' by bank memo dated 20.07.2015. Thus, the learned counsel appearing for the respondent prayed for dismissal of the criminal original petition.

6. Considered the rival submissions made by both sides and perused the typed set of papers.

7. It is an admitted fact that the respondent has preferred the complaint on the ground of dishonour of the cheque dated 16.07.2015 issued for a sum of Rs.6,00,000/-. So, it is evident that the cheque has been issued only on 16.07.2015. It is also admitted that the cheque has been issued by the first accused company and it was signed by the accused 2 to 4 alone and not by the 5th accused/petitioner herein. Even as per Form 12, the petitioner/5th accused has resigned from the Directorship of the company with effect from 01.12.2014. So, the petitioner is neither the signatory to the cheque dated 16.07.2015 nor she is the Director of the first accused company as on date of issuance of the cheque. Hence, I am of the considered view that the ingredients of Section 138 of the Negotiable Instruments Act has not been made out.

8. In view of the above stated position, the Criminal Original Petition is allowed and consequently, the proceeding in C.C.No.1122 of 2015 pending on the file of the VIII Metropolitan Magistrate Court at George Town, Chennai is quashed, as against the petitioner. Connected miscellaneous petition is also closed.

9. At this juncture, the learned counsel appearing for the respondent prayed for earlier disposal of the proceedings. Considering the said submission, the VIII Metropolitan Magistrate Court at George Town, Chennai is directed to dispose of the proceeding in C.C.No.1122 of 2015 within a period of three months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

The VIII Metropolitan Magistrate
George Town Chennai.

1 cc to Mr.S.RameshKumar, Advocate, sr.27490
1 cc to Mr.S.Karunamoorthy, Advocate, sr.27816

Cr1.O.P.No.5860 of 2016

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