

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Cr1.O.P.No.19130 of 2011 and
M.P.No.1 of 2011

Faizel Hashim,
Executive Director,
M/s.Chennai Fashions (India) Pvt. Ltd.,
K-45, Apparel Park,
Katrambakkam, Main Road, SIPCOT,
Irungattukottai, Sriperumbudur,
Kancheepuram District - 602 105. Petitioner

Vs

- 1.M/s.Pokarana Enterprises,
Prop: Hemalatha,
Rep. by her Power Agent Pavan Kumar,
No.80/2, Godown Street,
Chennai - 600 001.
- 2.M/s.Chennai Fashions (India) Pvt. Ltd.
K-45, Apparel Park,
Katrambakkam, Main Road, SIPCOT,
Irungattukottai, Sriperumbudur,
Kancheepuram District - 602 105. Respondents

Prayer: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records in C.C.No.3842 of 2010 pending on the file of VIII Metropolitan Magistrate Court, George Town, Chennai and quash the same.

For Petitioner : Mr.Rishi S.Ahuja

For Respondents : No Appearance

JUDGMENT

The petitioner herein who is the 2nd accused in C.C.No.3842 of 2010 pending on the file of the learned VIII Metropolitan Magistrate Court, George Town, Chennai has filed this criminal original petition under section 482 of Cr.P.C. to quash the above said calendar case.

2.The short facts leading to filing of the private complaint as follows that according to complainant/1st respondent herein, in a business transaction said to have taken place between the 1st accused company and the complainant company, the complainant had supplied white cotton cloth worth Rs.2,11,119 /- to the 1st accused company. Towards part payment of the above said due, the petitioner herein had issued a cheque bearing No.039022 dated 24.04.2009 drawn on State Bank of Travancore, Kilpauk Branch for a sum of Rs.1,66,569/-. As per instruction of 1st accused company, the complainant had deposited the above said cheque through his banker namely Kotak Mahendra Bank. However said cheque was returned unpaid with endorsement "insufficient funds". Thereafter the Statutory notice was sent to accused on 03.08.2009. Despite receipt of notice, the accused failed to pay the cheque amount, hence the above complaint came to be filed for offence punishable under section 138 of N.I. Act.

3.Challenging the above said complaint, the petitioner herein has filed this criminal original petition to quash the above private complaint on the ground that the petitioner herein is not the Managing Director as alleged in the complaint and he is only an Executive Director of the 1st accused company. Hence he is no way liable as alleged in the complaint and accordingly he seeks to quash the above complaint.

4.I heard Mr.Rishi S.Ahuja, learned counsel for the petitioner and perused the entire materials available o record. There is no representation on behalf of the respondents.

5.The learned counsel for the petitioner would submit that petitioner herein is only an Executive Director and not a Managing Director. He is not in charge of day to day affairs of the 1st accused company. He had no role in any financial transaction for and on behalf of the company and any financial claim can be made only as against the Managing Director who happened to be the day in-charge of the company. Thus he prayed the above complaint to be quashed in so far as the petitioner is concerned.

6.Hearing upon the submission of the Learned Counsel for the petitioner and on perusal of the impugned complaint, it is seen that absolutely there is no averment as to how the petitioner was in charge of the above monetary transaction.

7. Again the incorporation documents of the company also show that only one Mr.K.P.Hasim is the Managing Director of the company. The complaint is also silent as to the role of the petitioner herein and his liability towards the cheque amount. More so, the petitioner was not issued with any Statutory Legal Notice, which is mandatory procedure to lodge a complaint under the Negotiable Instruments Act.

8. Therefore, this Court finds the complaint on hand if allowed to be proceeded in as much as the petitioner is concerned, the same will be an abuse of process of law.

9. In the result, the C.C.No.3842 of 2010 pending on the file of the learned VIII Metropolitan Magistrate Court, George Town, Chennai in as much as the petitioner /accused No.2 alone is hereby quashed. There shall be no order as to costs.

Sd/-
Deputy Registrar

//True copy//

Sub Assistant Registrar

vs

To

The VIII Metropolitan Magistrate Court,
George Town, Chennai.

+3cc to Mr.Rishi S Ahuja, Advocate SR.No.20508

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GMV (08/11/2018)

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