

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.03.2017

CORAM

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P.No.29260 of 2011
and
M.P.No.1 of 2011

V.Ganesh Kumar
Proprietor, Dyanamic Equipments & Conveyors
No.4A, Saroji Prasanthi Apartments
Saibaba Colony, Coimbatore. .. Petitioner

vs.

1. N.V.Krishnan
2. Uma Maheswari
Proprietor, Varshini Equipments
No.4A, Saroji Prasanthi Apartments
Saibaba Colony, Coimbatore. .. Respondents

Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to call for records in C.C.No.66 of 2010 on the file of Judicial Magistrate II, Walajapet, and quash the same.

For Petitioner : Mr.I.Abrar Md.Abdullah

For Respondents : No Appearance

ORDER

This Criminal Original Petition has been filed by the petitioner to call for records in C.C.No.66 of 2010 on the file of the learned Judicial Magistrate II, Walajapet, and quash the same.

2. The facts in a nutshell are as under: The petitioner is involved in manufacturing of stone crusher machines and

conveyors under the name and style of M/s.Dyanamic Equipment & Conveyors Company, Coimbatore. The first respondent is engaged in the business of crushing of stone. The second respondent is the wife of the petitioner and she is engaged in manufacturing activities in stone crusher machine and conveyors under the name and style of M/s.Varshini Equipments at Coimbatore.

3. It is stated that the second respondent issued two cheques for the purpose of business to the first respondent dated 23.12.2009 for a sum of Rs.5,00,000/- and dated 31.12.2009 for a sum of Rs.60,00,000/-. The said cheques were presented by the first respondent through his bankers on 19.1.2010, but the said cheques were returned on the ground of insufficient funds in the account of the second respondent.

4. The first respondent issued legal notice dated 2.2.2010 to the petitioner and the second respondent and it is stated that only after receipt of the legal notice the petitioner came to know that the second respondent had issued cheques and the same had been dishonoured. According to the petitioner, he is no way related to the business transaction between the first and second respondents and he had been unnecessarily issued a legal notice.

5. In such backdrop, the present criminal original petition is filed for the relief stated supra.

6. The learned counsel appearing on behalf of the petitioner vehemently contended that the petitioner is no way related to the said cheques issued by the second respondent and, therefore, the provisions of Section 138 of the Negotiable Instruments Act are not attracted and this petition is not maintainable.

7. There is no representation on behalf of the respondents. I heard Mr.I.Abrar Md. Abdullah, learned counsel for the petitioner and perused the documents available on record.

8. A bare perusal of the cheques shows that the cheques are not signed by the petitioner. There is nothing on record to show that the petitioner is managing the affairs of the business or he was concerned with the business of the second respondent. It is not the case of the first respondent complainant that the petitioner herein is the signatory of the cheques.

9. In the case on hand, there is nothing on record to show that the petitioner was in any way connected with the business of his wife. The transaction has taken place between the first respondent complainant and the second respondent. Unfortunately, the learned Magistrate has also issued process in a mechanical manner without verifying the facts properly. Filing

of such complaint is, therefore, nothing but abuse of process of law. An innocent person cannot be subjected to criminal proceedings when he is not connected with the business of the second respondent. Considering the aforesaid aspect of the matter, the complaint of the first respondent complainant insofar as the petitioner herein is concerned is required to be quashed by exercising powers under Section 482 of the Criminal Procedure Code.

10. It is needless to say that the first respondent complainant can avail appropriate remedy in accordance with law insofar as the second respondent, who is the signatory of the cheques, is concerned.

11. In such view of the matter, this criminal original petition is allowed. The complaint, being C.C.No.66 of 2010, on the file of the learned Judicial Magistrate II, Walajapet, is quashed insofar as the petitioner herein is concerned. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

- 1.The Judicial Magistrate No.II,
Walajapet.
- 2.The Section Officer,
Criminal Section, High Court,
Chennai-104.

+1cc to Mr.Abrar MD Abdullah, Advocate Sr.17138

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srg 24/10/2018