IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2017

CORAM

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

CRL.O.P.No.3134 of 2011
and
M.P.Nos.1 and 2 of 2011

Subhash Chandra .. Petitioner/Accised Mo.3

Vs

Mahalakshmi Factoring Services Ltd.
Rep. By its Manager, V.Ganesan
No.16, Rottlers Street, Doveton
Chennai - 600 112. .. Respondent/Complainant

PRAYER: Petition filed under Section 482 of the Code of Criminal Procedure to call for the records and quash C.C.No.1976 of 2001 filed by the respondent pending before the II Metropolitan Magistrate Court, Egmore, Chennai.

For Petitioner : Mr.Perumbulavil Radhakrishnan

For Respondent : No Appearance

ORDER

This Criminal Original Petition has been filed by the petitioner to call for records in C.C.No.1976 of 2011 pending on the file of the learned II Metropolitan Magistrate, Egmore, Chennai, and to quash the same.

2. The facts in a nutshell are as under: The respondent is the complainant and the petitioner herein is the third accused in the complaint. According to the complainant, the accused, four in number, sought financial assistance and the complainant forwarded a loan of Rs.56,15,000/- and the total amount repayable by the accused was Rs.68,67,240/-. The said amount was agreed to be repaid in twenty-four monthly instalments of Rs.2,86,135/-, however the accused reneged on their promise and defaulted in repayment.

3. The complainant on learning that the accused in similar fashion had cheated other companies and they had used the loan obtained from the complainant for their own use rather than for purchasing machineries as it was supposed to be, filed a complaint before the learned II Metropolitan Magistrate, Egmore, Chennai, for the offences under Sections 405 and 420 read with Section 34 of the Indian Penal Code. The same was taken on file and summons were issued to the accused.

4. Assailing the said proceedings, the third accused has filed the present criminal original petition.

5. It is the contention of the learned counsel appearing on behalf of the petitioner that he was only a Non-Executive Director of the first accused company and he was not involved in any manner with the day to day affairs of the company and he had resigned from the said post on 9.4.1996, i.e., prior to the alleged cause of action which led to the filing of the complaint by the respondent. To fortify the said stand, he placed reliance on Form 32 filed under the Companies Act.

6. He further contended that the ingredients of Sections 406 and 420 of the Indian Penal Code are not established in the case on hand and, therefore, the complaint itself is not maintainable. He added that the intention of the party to commit such illegal act with malice aforethought has not been established and that the entire complaint is silent about the nature of property, description of the property, date of entrustment, mode of entrustment, etc.

7. He submitted that first accused company has been filing BIFR proceedings much prior to filing of the present complaint in the year 2001 and ultimately, the company was wound up by an order dated 29.09.2005 passed by the Bombay High Court.

8. There is no representation on behalf of the respondent. I heard Mr.Perumbulavil Radhakrishnan, learned counsel for the petitioner and perused the documents available on record.

9. A bare perusal of the documents annexed in the typed set of papers shows that the petitioner herein resigned from the first accused company way back on 09.04.1996 and the same is amply clear from a copy of Form 32. In view of Form 32, which document is available in public domain and which has not been disputed by the respondent complainant by filing counter affidavit, there is no gainsaying that the petitioner was not associated with the company on the date of obtaining loan, regarding which a complaint was lodged in the year 2001, i.e.,

after five years of resignation of the petitioner.

10. The above facts leave no manner of doubt that on the date the offence was alleged to have been committed by the first accused company, the petitioner was not the Director and he had nothing to do with the affairs of the first accused company.

11. In my firm view, there is sufficient evidence to indicate that the petitioner had already resigned and was no longer the Director of the first accused company when the loan in question was obtained. In such view of the matter, this Court does not propose to traverse into the other contentions raised on behalf of the petitioner with regard to the merits of the allegations levelled against the petitioner.

12.For the foregoing reasons, this criminal original petition is allowed and the complaint qua the petitioner is quashed. The process which is issued qua the petitioner is set aside. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

vs

To

The II Metropolitan Magistrate
Egmore, Chennai.

+1cc to Mr.Perumbulavil Radhakrishnan, Advocate SR.No.23256

CRL.O.P.No.3134 of 2011
and
M.P.Nos.1 and 2 of 2011

RSK(CO)

GMY(28/11/2018)