



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CrI.O.P.(MD).No.15119 of 2017
and

CrI.M.P.(MD) Nos.10060 and 10061 of 2017

Prasanth

... Petitioner/Accused No.2

Vs.

Meenakshi Sundaram

... Respondent/Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records in S.T.C.No.466 of 2017 pending on the file of the learned Fast Track Court No.II at Judicial Magistrate Level, Madurai and quash the same.

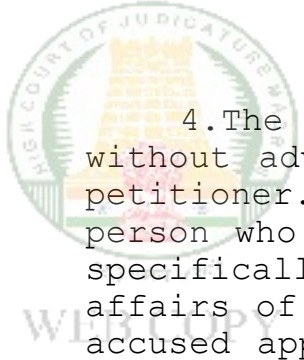
For Petitioner : Mr.Ashok Kumar

O R D E R

This Criminal Original Petition has been filed to call for the records in S.T.C.No.466 of 2017 pending on the file of the learned Fast Track Court No.II, Judicial Magistrate Level, Madurai and to quash the same.

2.The petitioner is the second accused in the complaint that was lodged by the respondent for the offence punishable under Sections 138 r/w 142 of Negotiable Instruments Act.

3.The learned counsel for the petitioner states that the petitioner, who is the second accused in the complaint, is not the Director of the company, namely, "Sree Prashant Spinners Ltd" and he resigned from the company in 2013. It is further stated that he has produced Form 32 before this Court whereby it was confirmed that the petitioner was shown as the Director of the above said company is not associated with the company with effect from 06.08.2013. The learned counsel for the petitioner relies upon Section 142 of the Negotiable Instruments Act and submitted that unless the petitioner is shown as a person in-charge of the company or responsible to the company for the conduct of the business as well as the company, he cannot be liable for prosecution for an offence under Section 138 of Negotiable Instruments Act.



4.The submission of the learned counsel for the petitioner is without adverting to the complaint that was lodged as against the petitioner. In the complaint, it seen that the petitioner is the person who issued the cheque on behalf of the said company. It is specifically stated that the second accused is liable for day-to-day affairs of the company. It is further stated that only the second accused approached the de-facto complainant on behalf of the first accused for the engagement of security service for all the branches of the company in April 2016 and that the monthly fee for providing security service to the accused company was paid through cheque that is the subject matter in the complaint.

5.Since the petitioner who is shown as the second accused issued the cheque on behalf of the first accused and the cheque was dishonored, the contention of the petitioner that he is no more the Director of the company has no legal force. The Form 32 produced by the petitioner, cannot be accepted as a solid evidence, at this stage, to quash the complaint.

6.Having regard to the specific allegation, this Court is also of the view that it is improbable that the petitioner is not a Director and the document which he has filed must be obtained for the purpose of this case. As regards the specific statement that was made as against the petitioner in the complaint, the petitioner has not given any explanation in this petition except stating that he is not a Director from 2013. The petitioner has not come to this Court with clean hands. The specific allegations in the complaint are not traversed in the petition. However, the petitioner's liability is denied by producing Form 32 which is contrary to the specific allegations in the complaint. The petitioner *prima facie* has not made out a case before this Court and his case on the basis of a single document cannot be accepted. This Court is not able to accept the document produced by the petitioner before this Court denying his liability as it could be a concocted document especially when the petitioner has issued the cheque in 2016. *prima facie* the petitioner has committed an offences under Section 420 IPC.

7.The following judgements are relied upon by the learned counsel for the petitioner for the proposition that person who is not responsible for affairs of the company or who did not function as Director on the date when cheque was issued is not liable to be prosecuted for offence under Section 138 of Negotiable Instruments Act, 1881.

1.**S.B.Shankar Vs. Amman Steel Corporation** reported in 2002 Cri L.J. 836.

2.**Ashok Malhotra and Anr. Vs. Mansi Finance (Chennai) Ltd.** reported in [2002] 110 CompCas604 (Mad) .

<https://hcservices.ecourts.gov.in/hcservices/>

3.**Ashok Muthanna Vs.Wipro Finance Ltd.** reported in 2001-2-LW (Cr1) 603.



8.No doubt, it is true that Section 141 of Negotiable Instruments Act, 1881, clearly indicate that the complaint is maintainable only against the person who is in-charge of the company or who is responsible to the company for the conduct of the business of the company as well as the company, for the offence under Section 138 of Negotiable Instruments Act, 1881. In this case, specific allegations in the complaint clearly disclose the offences committed by the petitioner (the second accused). This Court cannot deal with contentious issues involving disputed questions of fact at this stage. In this case Form 32 produced by the petitioner is not admitted and the cheque itself was issued by the petitioner on behalf of company. Hence, the Judgments above referred to are not applicable to this case.

9.With these above observations, this Criminal Original Petition is dismissed with cost of Rs.5,000/- (Rupees Five Thousand only) payable to the Hon'ble Chief Justice Relief Fund within a period of two weeks from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petitions are closed.

10.Post this matter for compliance after two weeks from the date of issuance of this order to the petitioner.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The Judge, Fast Track Court No.II at
Judicial Magistrate Level, Madurai.

Copy To:-

1. The Section Officer, Accounts Section,
Madurai Bench of Madras High Court,
Madurai.

2. The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.M.VIVEKANANDAN, ADVOCATE IN SR No. 86089

MM

TE/JC/SAR-3 : 19/12/2017 : 3P/5C