

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.06.2018
Pronounced on : 19.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.14608 of 2011
and
M.P.No.1 of 2011

J.V.I.Durairaj,
S/o.A.V.Ysravel,
Director,
M/s. Sea and Air Shipping House India
Private Limited,
Door No.26, First Floor,
Annapoorna Layout,
Gandhi Nagar,
Tiruppur - 641 603. Petitioner/4th Accused

Vs.

M/s. Cargo Partner Logistic
India Private Limited,
Represented by its Power Agent,
M/s. N.Subah,
D/o. Late N.Pillai,
Branch Office at Door No.1990,
2nd Floor,
Trichy Road, Singanallur,
Coimbatore - 641 005. ... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the proceedings in S.T.C.No.691 of 2010 on the file of the Judicial Magistrate Court No.III at Coimbatore and quash the same.

For Petitioner : Mr.J.Franklin

For Respondent : No appearance (Name printed)

O R D E R

This Criminal Original Petition is filed to call for the records pertaining to the proceedings in S.T.C.No.691 of 2010 on the file of the Judicial Magistrate Court No.III at Coimbatore and quash the same.

2.The petitioner herein, who is an accused No.4 in S.T.C.No.691 of 2010 pending on the file of the Judicial
<https://hcservices.ecourts.gov.in/hcservices/>

Magistrate Court No.III, Coimbatore to quash the proceedings under Sections 138 and 142 of the Negotiable Instruments Act initiated by the respondent, which is pending trial.

3.The contention of the learned counsel appearing for the petitioner is that the trial Court failed to look into the fact that the first accused is the Company and the petitioner has been roped in as accused No.4. Since the petitioner is the Director of the first accused company, which was a partnership firm under the name and style of M/s.S&A Shipping House of which the Accused Nos.2 and 3 in their personal capacity and one Mr.G.Karthikeyan and Mrs.N.Sumathy, who were the persons then were directly involved, in-charge and responsible for the conduct and day-to-day affairs of the said A1 partnership firm. While, the first accused company was a partnership firm, the respondent/complainant had forwarded the consignments to various destinations through the first accused firm, who is a clearing, forwarding and shipping agent and the said partnership firm had to pay an outstanding payment of Rs.24,48,472/- (Rupees twenty four lakh forty eight thousand four hundred and seventy two only) to the respondent/complainant.

4.The specific stand of the learned counsel for the petitioner is that the petitioner was not a partner and was not a Director and the liability of the first accused company towards the respondent was prior to that the petitioner being made as a Director in the first accused company. For which the petitioner in his typed set of papers had annexed the Certificate of Incorporation of the first accused company dated 16.10.2007, in which the name of the second and third accused are shown as Directors. The petitioner was appointed as Director only on 12.08.2008, for which the Board Resolution has been annexed. Therefore, the liability due, which

was payable by the first accused company was a due of the erstwhile partners. The partnership firm's liability cannot be fastened on the petitioner and the petitioner cannot be held liable for the same. On this ground, the above quash petition has been filed.

5.It is seen from the complaint that when it was a partnership firm the due towards the respondent for which the cheque in issue has been issued by the first accused company i.e. for the erstwhile dues of the company. Further, no cheques were signed by this petitioner. On 09.04.2009, the cheque in issue i.e. the cheque bearing No.281606 dated 09.09.2009 for Rs.23,48,472/- (Rupees twenty three lakh forty eight thousand four hundred and seventy two only) was issued.

6.Pursuant to the agreement arrived at between the first accused company in which the petitioner accused No.4 is also said to have signed the agreement of settlement. Further, as it could be seen from the complaint that there have been

specific averments against this petitioner in acknowledging the liability of the first accused company and issuance of the cheque in issue towards the discharge of its liability towards the respondent. In such circumstances, the contention of the petitioner cannot be countenanced.

7.The contention of the learned counsel for the petitioner is that the petitioner is not liable to be prosecuted. The petitioner further relied upon the Judgment of the Hon'ble Apex Court of India reported in (2007) 4 Supreme Court Cases 70 in the case of S.M.S.Pharmaceuticals Limited Vs. Neeta Bhalla and Another; (2) 2009 (5) CTC 81 in the case of K.K.Ahuja Vs. V.K.Vora and Another; (3) This Court Order dated 12.04.2007 in Crl.O.P.Nos.1222 and 4098 of 2007 in the case of Capt.D.Karunakar, Director, M/s.Manito Electronics Private Limited, Anchorage, East Hill, Calicut 673 005 Vs. Tamil Nadu News Print & Papers Limited.

8.These citations will not applicable to the facts and circumstances of the above case. In view of the specific averments made against the petitioner. Further, the cheque in issue was issued, pursuant to the agreement of settlement in which the petitioner has also signed as Director of the first accused company, as per the complaint. In view of the above, the contention of the petitioner to quash the complaint filed by the respondent/complainant does not merit consideration.

9.In view of the above this Criminal Original Petition is dismissed. Since the case is pending from the year 2011, the trial Court is directed to complete the trial and conclude the case within a period of three months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Deputy Registrar

सत्यमेव जयते

//True Copy//

Sub Assistant Registrar

ah
To

1.The Judicial Magistrate No.III, Coimbatore.

2.The Public Prosecutor,
High Court, Madras.

sm:26.7.2018

Crl.O.P.No.14608 of 2011