IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2018

CORAM

THE HONOURABLE Mr.JUSTICE M. NIRMAL KUMAR

Crl.O.P.No.15603 of 2011
and
M.P.No.1 of 2011

S.Shanmugam,
S/o.A.Subramani. ... Petitioner/Accused No.4

Versus

A.Kandappan,
S/o.T.P.Appusamy. ... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the S.T.C.No.1019 of 2010 on the file of the Judicial Magistrate Court No.I, Erode and quash the same by allowing the Criminal Original Petition.

For Petitioner : Mr.M.Guruprasad for
Mr.R.Marudhachalamurthy

For Respondent : No appearance
[Name printed]

O R D E R

This Criminal Original Petition is filed to call for the records relating to the S.T.C.No.1019 of 2010 on the file of the Judicial Magistrate Court No.I, Erode and quash the same by allowing the Criminal Original Petition.

2.The petitioner herein, who has been arrived as Accused No.4 in a private complaint filed by the respondent for the offence under Section 138 of the Negotiable Instruments Act, which is pending trial in S.T.C.No.1019 of 2010 on the file of the Judicial Magistrate Court No.I, Erode.

3.Notice has been served to the respondent on 19.08.2011 and proof of service has been submitted by the learned Judicial Magistrate No.I, Erode, despite receipt of notice, the respondent had failed to appear in the above case. The name of the respondent has been printed in the cause list, the respondent had chosen not to appear. Absence of the respondent and adjourning the case would be of no use. Hence, I proceed to dispose of the case on merits, on the submissions of the petitioner, typed set of papers and on the available materials on record.

4.The respondent has filed a private complaint under Section 138 of the Negotiable Instruments Act against one Vibgyor Yarn Dyers, a partnership firm and arrived this petitioner as A4 on the strength that he is one of the partner of the first accused firm.

5.On a perusal of the complaint, it is seen that for the welfare of the first accused firm, A2 to A4 representing the first accused had borrowed a sum of Rs.1,25,000/- on 05.06.2010, as hand loan from the respondent and the second accused namely Senthil Kumar had agreed to repay the same within a month. In discharge of the said debt, the second accused on behalf of the first accused, with the consent and knowledge of the third and fourth accused, issued a cheque bearing No.317742 dated 05.07.2010 drawn on UTI Bank Limited, Erode Branch for a sum of Rs.1,25,000/- (Rupees One lakh twenty five thousand only).

6.On the assurance given by the accused Nos.2 to 4, the respondent on 18.08.2010, had presented the said cheque through his bankers viz., Union Bank of India, Erode Branch and the said cheque was returned dishonoured with a memo dated 19.08.2010 with an endorsement as "Account closed". Thereafter, on 08.09.2010, the respondent had sent a registered notice, which was received by the accused on 13.09.2010. Despite the receipt of the notice, no payment was made by the accused. Hence, the respondent had filed the complaint against the partnership firm and it's partners namely A1 to A4.

7.The learned counsel for the petitioner submitted that the petitioner herein, who has been arrived as A4 in the complaint had resigned from the first accused partnership firm on 14.07.2007 and from thereon he has nothing to do with the partnership firm. The resignation of the petitioner/A4 has been filed, after giving due notice dated 30.05.2008 before the Registrar of Firms. In support of the same, the copy of the "FORM A" has been filed. As it could be seen from the "Form A", it is clear that this petitioner had resigned from the first accused firm.

8.The admitted case of the respondent/complainant is that the loan for the first accused firm was borrowed on 05.06.2010 and the cheque in issue in this case in discharge of the said loan was issued after the resignation of the petitioner/A4 from the partnership firm, as contended by the petitioner/A4. He could not be held vicariously liable for the act of the firm of the year 2010 and prayed for quashing the case as regard the petitioner/A4.

9.Apart from this ground, it could be seen from the complaint except for the bald averments against this petitioner, there in no specific over tact attributed about this petitioner. Further, it is an admitted case that the petitioner is not signatory to the cheque. In view of the above and as per the guidelines of the Hon'ble Apex Court of India in the case of K.K. AHUJA VS. V.K.VOHRA reported in 2010(2) SCC (Crl.) 1181, it could be seen that the continuation of the proceedings as against the petitioner is to be quashed.

10.In view of the above finding, the case against the petitioner alone is quashed. Accordingly, this Criminal Original Petition stands allowed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate Court No.I,
Erode.

2.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.Guuruprasad, Advocate, S.R.No. 51519

Crl.O.P.No.15603 of 2011

SJ(CO)
GN(06/09/2018)