

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

Cr1.O.P.No.4549 of 2011

B.Kumaraguru,
S/o.T.R.Balasubramaniam,
Director,
M/s. Pamban Apparel Limited,
No.65, II Trust Main Road,
R.A.Puram,
Chennai - 600 028.

Now at:
No.107, 2nd Trust Main Road,
Mandaveli,
Chennai - 600 028. Petitioner/2nd Accused

Vs.

Sterling Holiday Financial Services Limited,
Represented by its Power Agent,
T.N.Varadharajan,
"Padma Complex" III Floor,
320, Anna Salai,
Nandanam,
Chennai - 600 035. Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to C.C.No.6501 of 1999 on the file of the XVIII Metropolitan Magistrate Court, Saidapet, Chennai and quash the same.

For Petitioner : Mr.Prakash Goklaney

For Respondent : No appearance (Name printed)

O R D E R

This Criminal Original Petition is filed to call for the records relating to C.C.No.6501 of 1999 on the file of the XVIII Metropolitan Magistrate Court, Saidapet, Chennai and quash the same.

2.The petitioner, who is the second accused in
<https://hcservices.ecourts.gov.in/hcservices/>
C.C.No.6501 of 1999 pending on the file of the XVIII

Metropolitan Magistrate Court, Saidapet, Chennai for the offence under Section 138 of the Negotiable Instruments Act filed by the respondent against the petitioner and two others.

3.The contention of the learned counsel appearing for the petitioner is that the petitioner has been roped in as an accused, since the petitioner happens to be the Director of the first accused company. The petitioner had not signed the contract entered into between the first accused company and the respondent and the petitioner was not a Director on the date of the issuance of the cheque, date of dishonour and on the date of notice. Further, there is no specific averments against the petitioner and the respondent/complainant has not taken due diligence in proceeding with the case before the Trial Court and the proceedings in the trial Court has been pending for a long time, without any progress. The trial Court has dismissed the complaint as against one R.Ashok, Managing Director of the first accused, on the ground that the respondent had not taken effective steps to execute the warrant and thereby dismissing the complaint as against the third accused has caused great prejudice to the petitioner. The petitioner further filed the typed set of papers in support of his contention.

4.On going through the complaint, there is a categorical averment against the petitioner that this petitioner is the Director of the first accused company had signed and issued the cheque bearing No.034470 dated 21.07.1999 for a sum of Rs.12,33,680/- (Rupees twelve lakh thirty three thousand six hundred and eighty only) drawn on State Bank of India, R.A.Puram branch, Chennai. The said cheque had been issued for the purpose of purchasing machinery and office equipment of the first accused company for which the respondent/complainant had financed a loan of Rs.17,90,820/- (Rupees seventeen lakh ninety thousand eight hundred and twenty only) as per Hire purchase contract No.10632 dated 23.03.1996 has been entered between the respondent and the first accused company. In discharge of the said liability, the cheque in issue has been signed and issued by the petitioner herein.

5.All the statutory complaint has been complied with and thereafter, the complaint has been launched. The trial is proceeded and completed the evidence on the side of the respondent/complainant and the case is posted on 17.07.2009 for examination of defence witnesses. The accused were questioned and no defence witnesses were produced and the case was adjourned to 24.07.2009. On which day, the case against A3 has been dismissed and in the midst of the trial, a petition under Section 311 of the Code of Criminal Procedure has been filed by the petitioner, at this juncture, the above quash petition has been filed by the petitioner, which leads to natural corollary that this criminal original petition has been filed by the petitioner only to drag on the proceedings.

6.In view of the above facts and legal position the contention of the petitioner is not sustained and it is to be rejected and hence, the quash petition is dismissed.

7.The learned counsel for the petitioner had submitted that the delay has caused great prejudice to the petitioner and prayed this Court to quash the proceedings on that ground and he relied upon the following Judgments of the Hon'ble Supreme Court of India and the Bombay High Court reported in 2002 CRI.L.J.4099 in the case of State through C.B.I. Vs. Dr.Narayan Waman Nerukar and another; (2) 2002 CRI.L.J.1164 in the case of A.Jayant Vs. Inspector General of Police, C.B.I., Nagpur.

8.On going through the documents filed by the petitioner, it is seen that the petitioner had filed a petition under Section 311 of the Code of Criminal Procedure at the stage of examination of the defence witnesses, which would show that the delay has occurred at the instance of the petitioner. The above citations relied upon by the petitioner is of no consonance.

9.In view of the above, the Criminal Original Petition is dismissed. Considering the long pendency of the case from the year 1999 and considering the stage of the case, the trial Court is directed to conclude the trial expeditiously and dispose of the case within a period of two months, from the date of receipt of a copy of this order.

Sd/-
Deputy Registrar

//True Copy//

सत्यमेव जयते Sub Assistant Registrar

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To

1.The XVIII Metropolitan Magistrate,
Saidapet, Chennai

2.The Public Prosecutor,
High Court, Madras.

+2cc to Mr.Prakash Goklaney, Advocate SR.No.48209

sm:26.7.2018

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