

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CrI.O.P No.27250 of 2009
and
M.P.Nos.1 and 2 of 2009

K.Annapoorani

... Petitioner

vs.

M/s.IAL India Limited,
(formerly IAL Container Line (India) Limited,) M.S.Towers, 2nd Floor,
631A, Poonamallee High Road,
Aminjikarai, Chennai - 600 029.

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.1348 of 2009, on the file of the learned V Metropolitan Magistrate, Egmore, Chennai and quash the same.

For Petitioner : Mr.P.S.Kothandaraman

For Respondent : Mr.S.Vasudevan

JUDGMENT

The above quash petition is preferred by the 3rd accused in the case before the trial Court in C.C.No.1348 of 2009. The said case has been preferred by the respondent herein for an offence under Section 138 of the Negotiable Instruments Act against the 1st petitioner Firm namely Arun Knit wear putting ship and others. The 3rd accused arrayed therein in the Complaint is the petitioner before this Court.

2.The petitioner has come forward with the above quash petition to quash all further proceedings as against him on the following grounds:

- a) The absence of averments as to in what manner the petitioner was responsible for the conduct of the business of the first accused company.
- b) The petitioner was relieved from service of 1st accused company on 31.03.2005 itself, which is much prior to the issuance of the cheque.

3.The petitioner to substantiate his claim that he was relieved from service of the first accused company on 31.03.2005 itself well before the issuance of the alleged cheques rely and produced a document of dissolution of firm dated 31.03.2005. It is significant to note that the Document is not a registered one. Therefore this Court finds that the document sought to be relied on by the petitioner are personal in nature and are private document. Excepting the said document nothing is produced before this Court for appraisal. The genuineness of the said document is doubtful. The veracity and genuineness of the said private documents, which are not certified copies of public documents as prescribed under Section 76 of the Indian Evidence Act and which are not forming part of the prosecution/respondent's case, can be looked into only at the time of trial and not in the proceedings under Section 482 CrPC.

4.At this stage, only the complaint and the accompaniments can be looked into, to identify whether a prima facie case is made out or not and not any other document produced by the accused, much less, the documents which are not the documents within the purview of Section 76 of the Indian Evidence Act. If the contention of the accused is accepted, there would be a mini-trial and such roving and fishing inquiry is impermissible in a proceeding under Section 482 Cr.P.C otherwise that would defeat the object of the Code of Criminal Procedure.

5.In so far as the next ground that the allegation is bald and vague, there is no averment to the effect that petitioner herein is responsible for the conduct of the business of the first accused company, this Court vide paragraphs 5 and 16 notice that there is a specific allegation set forth by the respondent complainant as against the petitioner, the relevant portion is extracted hereunder:

"16.The Third accused is also another partner of the First accused. Both, the Second and third Accused were in-charge of the day-to-day affairs of the first accused, at the time of commission of offence and as such, both are liable to be punished under Section 138 of the Negotiable Instrument Act."

6.Therefore, the second ground of attack made by the petitioner too becomes unsustainable. Reading of the complaint and its accompaniments establish a prima facie case against the petitioner herein for an offence under Section 138 r/w Section 141 of the Negotiable Instrument Act. Hence it is just necessary

and essential and also to do complete justice that the petitioner is directed to face the trial and prove his innocence in the above case.

7. Once a Prima-faice case is made on the basis of averments made in the complaint and its accompaniments, this Court is in fact prohibited from exercising its powers under Section 482 CrPC to quash the proceedings in a case, that too considering the sufficiency or insufficiency of the materials produced or on the basis of the disputed materials produced by the accused.

8. It is needless to say that such contention of the petitioner can never be entertained by this Court under Section 482 Cr.P.C., as the same being based on factual matrix, which involves tendering of evidence at the time of trial.

9. In view of same this Court hold that the said private document cannot be taken into consideration, rather should not be taken consideration for the purpose of arriving at a decision in the above quash petition under Section 482 Cr.P.C.

10. In the result:

(a) this Criminal Original Petition fails and hence the same is dismissed hereby;

(b) the trial Court namely, the learned Vth Metropolitan Magistrate, Egmore, Chennai, is directed to dispose the case within a period of four months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

सत्यमेव जयते

vs

To

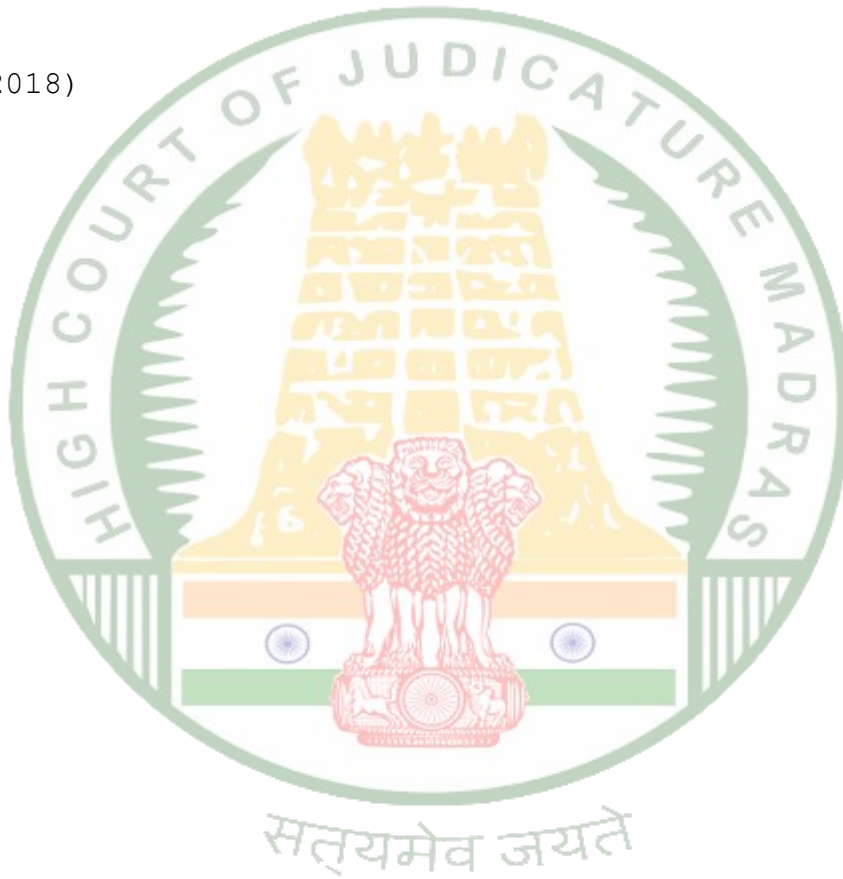
1. The V Metropolitan Magistrate,
Egmore, Chennai.
2. Do Thro The Chief Metropolitan Magistrate
Egmore, Chennai.

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+1 CC to Mr. Vasudevan, advocate sr 19.
+1 CC to Mr. Kothandaraman, Advocate sr 319.

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and
M.P.Nos.1 and 2 of 2009

MG (CO)
SP(19/01/2018)



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