

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2018

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP.No.17436 of 2018

and

Crl.MP.No.9027 & 9028 of 2018

1.T.N.Sirajudeen alias Thothappa Nainar Mohammed Sirajudeen
Director TSN Ecotech International Pvt. Ltd.,
No.18/3, Samadh School Street,
Khaja Nagar,
Tiruchirapallai - 620 020
Tamil Nadu.

2.Shanmugaraj Muralisundaram
Director TSN Ecotech International Pvt. Ltd.,
25/21, 1st Street, Indian Bank Colony,
Simco Meter Road,
Tiruchirapalli - 620 021
Tamil Nadu. ... Petitioners

Vs

M/s.Redington (India) Ltd.,
Represented by Mr.Sundararajan
Senior Legal Executive SPL Guindy House,
No.95, Mount Road, Guindy,
Chennai-600 032. ...Respondent

Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure to call for the records culminated in C.C.No.863 of 2018 on the file of XVIII Metropolitan Magistrate Court at Saidapet, Chennai-600 015 and quash the same.

For Petitioners : Mr.Gowthaman
for Mr.Karthikeyan
For Respondent : Mr.Narendran

O R D E R

This Criminal Original Petition has been filed to call for the records culminated in C.C.No.863 of 2018 on the file of XVIII Metropolitan Magistrate Court, Saidapet, Chennai-600 015 and quash the same as against the petitioners.

2. For the sake of convenience, the petitioners and the respondent will be referred to as the accused and the complainant respectively.

3. It is the case of the complainant that TSN Ecotech International Pvt. Ltd., (A1) had business dealings with the complainant, towards which, the impugned cheques were issued; that the cheques were presented by the complainant on 15.06.2017 and dishonoured on 21.06.2017; that the complainant issued a statutory notice on 06.07.2017 to the accused and thereafter, filed the present complaint in C.C.No.863 of 2018 and the same is pending on the file of the XVIII Metropolitan Magistrate Court, Saidapet, Chennai, for quashing which, T.N.Sirajudeen alias Thothappa Nainar Mohammed Sirajudeen (A1) & Shanmugaraj Muralisundaram (A4) are before this Court.

4. Heard Mr.Gowthaman, learned counsel for the accused and Mr.Narendran, learned counsel for the complainant.

5. The learned counsel for the petitioners/accused submitted that T.N.Sirajudeen alias Thottappa Nainar Mohammed Sirajudeen, who has been shown as representing the 1st accused company, has resigned from the company as early as on 01.09.2016 and in his place one M.Mohamed Sirajudeen had taken over. It is his further contention that after Mohamed Sirajudeen took over the 1st accused company, the company had cheated the present complainant and others, for which a case in Crime No.310 of 2017 has been registered on 19.09.2017 for the offences under Sections 420, 465, 467, 468 and 471 IPC.

6. The sum and substance of the contention of the learned counsel for accused is that a wrong person has been arrayed as an accused in C.C.No.863 of 2018.

7. Per contra, the learned counsel for the complainant refuted the contention and submitted that the Board Resolution referred to by Mr.Gowthaman, does not reflect in the records of the Registrar of Companies.

8. This Court gave its anxious consideration to the rival submissions.

9. In the opinion of this Court, these are disputed questions of fact, which cannot be gone into in a quash petition filed under Section 482 Cr.P.C. in the light of the law laid down by the Supreme Court in S.Krishnamoorthy Vs. V.Chellammal [(2015) 4 Scale 371]. It is always open to T.N.Sirajudeen alias Thottappa Nainar Mohammed Sirajudeen, to establish that he was not the Director during relevant point of time and that he is not M.Mohamed Sirajudeen. Hence, this petition is dismissed, with liberty to the accused to raise all the points before the trial Court. As regards Shanmugaraj Muralisundaram (A4), the complainant has alleged that he had also actively participated in the affairs of A1 company and in the teeth of such averments, the prosecution against Shanmugaraj Muralisundaram (A4) cannot be quashed.

10. However, the learned counsel for the accused sought permission of this Court to dispense with the personal appearance of Shanmugaraj Muralisundaram (A4), the second petitioner herein, before the trial Court.

11. Accepting his submission, the second petitioner is directed to appear before the trial Court within a period of two weeks from the date of receipt of a copy of this order. On his appearance, he shall file a petition under Section 436(1) Cr.PC, for bail and the trial Court shall release him on bail on the same day, on he executing a bond for Rs.5,000/- with two sureties. Thereafter, the second petitioner shall appear before the trial Court for receiving the complaint, for questioning under Section 251 Cr.PC, at the time of questioning under Section 313 Cr.P.C. and at the time of passing judgment. For the other hearings, the second petitioner shall file a petition before the trial Court under Section 317 Cr.PC., giving an undertaking that he will not dispute his identity and that the counsel named by him in the affidavit will cross-examine the prosecution witnesses on the day they are examined-in-chief, as held by the Supreme Court in Vinod Kumar vs. State of Punjab [2015(1) MLJ (Crl) 288]. On such a petition being filed, the trial Court may liberally consider the same. If the second petitioner adopts any dilatory tactics, it is open to the trial Court to insist upon his presence and remand him to custody as laid down by the Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh [JT 2001 (4) SC 319]. If the second petitioner absconds, the trial Court shall direct registration of an FIR against him under Section 229-A IPC. The trial court shall complete the trial as expeditiously as possible, provided, there is no other legal impediment. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The XVIII Metropolitan Magistrate,
Saidapet, Chennai.

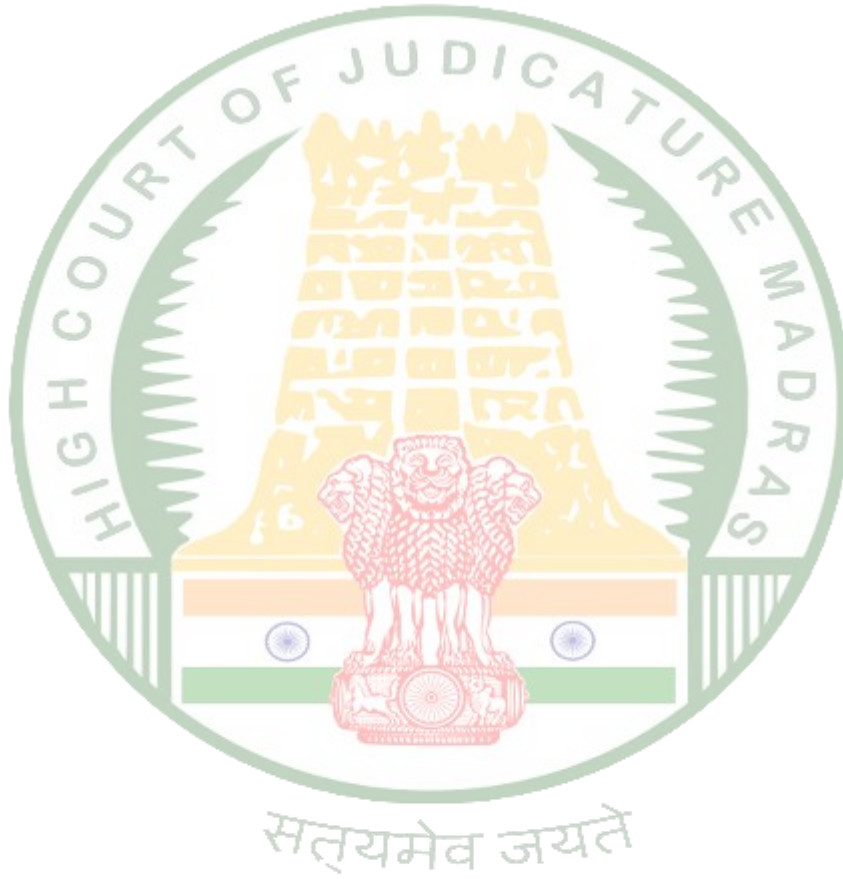
2.do Thro The Chief Metropolitan Magistrate,
Egmore, Chennai-8

+1cc to Mr.Narendiran, Advocate sr.no.44414

+2cc to Mr.Karthikeyan sekar, Advocate sr.no.51707(31/07/2018)

Cr1.OP.No.17436 of 2018

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