



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

WEB COPY

Cr1.O.P.(MD).No.15193 of 2016

and

Cr1.M.P.(MD).Nos.7137 & 7138 of 2016

V.Sathishkumar ...Petitioner / Accused No.2

Vs.

Sundarvannan ... Respondent / Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records relating to the case in S.T.C.No.197 of 2016, on the file of the Hon'ble Court of Judicial Magistrate No.III, Tirunelveli and quash the same.

For Petitioner	:Mr.B.Saravanan
For Respondent	:No Appearance

O R D E R

This Criminal Original Petition has been filed challenging the proceedings initiated under Section 138 and 142 of the Negotiable Instrument Act by the respondent, pending in S.T.C.No.197 of 2016, on the file of the learned Judicial Magistrate No.III, Tirunelveli.

2.The learned counsel appearing for the petitioner would submit that totally there are three accused persons added in this criminal complaint. The first and second accused persons are added in their capacity as partners and the third accused person is the partnership firm. The learned counsel appearing for the petitioner primarily raised two grounds before this Court. The first ground raised by the petitioner is that the cheque was given only as a security and the same has been misused by the respondent. This ground raised by the petitioner is factual in nature and the same has to be put to test in evidence before the Court below during the course of trial. This Court in exercise of its jurisdiction under Section 482 Cr.P.C, cannot consider this issue. The second ground that has been raised by the petitioners is that V.Sathish Kumar, does not participate in the day to day affairs of the business and he has been unnecessarily arrayed as an accused in the complaint and in order to substantiate this submission, the learned counsel appearing for the petitioner brought to the notice of this Court that J.Surya Vadhana, has signed the cheque in her capacity as the partner of the third accused firm. Therefore, the learned counsel appearing for the petitioner would submit that while adding V.Sathish Kumar as an accused, there should be necessary averments made in a complaint in order to justify his addition as an accused in this case, by virtue of Section 141 of the Negotiable Instrument Act.



3.This Court has carefully considered the second submission made by the learned counsel appearing for the petitioner. It is seen from the complaint that V.Sathish Kumar and J.Surya vadhana are husband and wife, who are the partners of the third accused / partnership firm.

4.In the complaint, a specific averment has been made to the effect that the cheque was issued by J.Surya Vadhana with the consent and knowledge of V.Sathishkumar and therefore, the said V.Sathishkumar has also been added as an accused in this case, in his capacity as a partner of the firm. It is enough to sustain the complaint with this averment. Insofar as the involvement of the said V.Sathishkumar in the day to day affairs of the partnership firm, the same has to be only established before the Court below in the course of trial. This Court cannot come to any conclusion or give any finding in this regard at this juncture.

5.Therefore, this Court is of the considered view that the grounds taken by the petitioner are not sustainable. These grounds will have to be raised before the Court below in the course of the proceedings and the Court below can consider the same on its own merits and in accordance with law. The Court below is directed to complete the proceedings within a period of three months from the date of receipt of a copy of this order.

6.In the result, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-III)

To
The Judicial Magistrate No.III, Tirunelveli.

- 1 CC TO Mr.B.SARAVANAN , ADVOCATE IN SR No.91288.
-
- TSG
- DS RSK SAR3 10 12 2018 2P 3C

Crl.O.P.(MD).No.15193 of 2016
23.10.2018