



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 23.10.2018
CORAM:
THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

WEB COPY

CrI.O.P.[MD].No.19540 of 2016
and
CrI.M.P(MD)Nos.9829 and 9830 of 2016

Vivekanandan : Petitioner/Accused No.2

Vs.

Shanmugam : Respondent/Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the entire records pertaining to the case in C.C.No.183 of 2013 pending on the file of the learned Judicial Magistrate, Valliyoor, Tirunelveli District and quash the same.

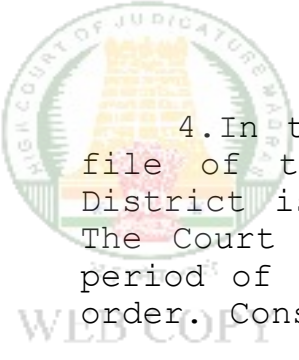
For Petitioner : Mr.R.Anand
For Respondent : No Appearance

ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.183 of 2013, on the file of the learned Judicial Magistrate, Valliyoor, Tirunelveli District.

2.The learned counsel for the petitioner would submit that admittedly in the complaint, it has been alleged that the first accused has signed the cheque in his capacity as sole proprietor of JCGG Auto Mobiles and this petitioner has been added as an accused only on the ground that he also had control over of the said concern. The learned counsel for the petitioner would further submit that admittedly the petitioner was not the drawer of the cheque. He would further submit that there is no separate identity between the sole proprietor and the proprietor concern and in the eye of law both are one and the same. The learned counsel for the petitioner would further submit that the theory of vicarious liability will not arise and it is only the proprietor who is solely responsible for the debt or lability. The learned counsel for the petitioner in order to substantiate his arguments relied upon the judgment reported in 2007 5 SCC 103 in the case of Raghu Lakshminarayanan Vs.M/s.Fine Tubes.

3.This Court finds force in the arguments advanced of the learned counsel for the petitioner. Admittedly, in this case, the cheque has been drawn in the name of the proprietor concern signed by the first accused. Therefore, this petitioner could not have been arrayed as an accused and the same goes against the very basis of Section 138 of Negotiable Instruments Act.



4. In the result, the proceedings in C.C.No.183 of 2013 on the file of the learned Judicial Magistrate, Valliyoor, Tirunelveli District is hereby quashed insofar as the petitioner is concerned. 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. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1. The Judicial Magistrate, Valliyoor,
Tirunelveli District

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mr.R.Anand, Advocate, SR.No. 91619

Cr1.O.P.[MD].No.19540 of 2016
and
Cr1.M.P(MD)No.9829 of 2016
23.10.2018

DAS
ES/SKN/RSK/SAR 3/28.11.2018/2P/4C