



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.10.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.[MD].No.19606 of 2016

and

Crl.M.P.(MD).Nos.9886 and 9906 of 2016

Basawaraj

: Petitioner/Accused

Vs.

M/s.Rich Phytocare Private Limited,
Through its Authorised Person and Manager,
K.Dharmaraj,
No.15-1-1, Tahsildar Office Road,
Bodinayakanur, Theni District.

: Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the records in S.T.C.No.34 of 2016, on the file of the learned Judicial Magistrate Court, Bodinayakanur, Theni District and quash the same.

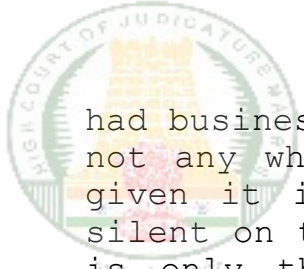
For Petitioner : Mr.C.Muthusaravanan
For Respondent : Mr.A.V.Vijayaraghavan

ORDER

The Criminal Original Petition has been filed seeking to quash the proceedings in S.T.C.No.34 of 2016, pending on the file of the learned Judicial Magistrate Court, Podinayakanur.

2. The learned counsel for the petitioner would submit that the respondent has filed a criminal complaint under Section 138 of the Negotiable Instrument Act against M/s.Chandrika Agro Syndicate. Even as per the averments made in the complaint, the said Chandrika Agro Syndicate is a sole proprietorship concern. According to the learned counsel for the petitioner one, Sri.Sathish is the proprietor of the said concern and he was the one who had signed in the cheque drawn in favour of the respondent. Therefore, the learned counsel would submit that the present petitioner Basawaraj cannot be made liable for the cheque signed by Sri.Sathish on behalf of M/s.Chandrika Agro Syndicate. The learned counsel for the petitioner has also brought to the notice of this Court that all the cheques were produced before the Court below.

3. The entire complaint goes on the footing that the respondent



had business dealing with Basawaraj. In the entire complaint, it is not anywhere stated that Basawaraj had signed the cheque and had given it in favour of the respondent. The complaint is totally silent on this issue. It is a well settled principle of law that it is only the drawer of the cheque who can be prosecuted. This position has been settled by the Hon'ble Supreme Court in the Judgment reported in **AIR (2013) SC 3210 (Mrs.Aparna A.Shah Vs. M/s.Sheth Developers Private Limited)**. This judgment will squarely apply to the facts of the case. The respondent has not filed the criminal complaint as against the actual drawer of the cheque. In cases, involving sole proprietorship, there is no independent entity for a proprietorship concern. Therefore, even though, Basawaraj is stated to be representing the proprietorship concern, since he is not the drawer of the cheque, he cannot be made as an accused in the complaint filed under Section 138 of the Negotiable Instrument Act.

4. In the result, the proceedings in S.T.C.No.34 of 2016, pending on the file of the learned Judicial Magistrate Court, Bodinayakanur, Theni District, is hereby quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Writs)

/True Copy/

Sub Assistant Registrar (CS-II)

To

The Judicial Magistrate,
Bodinayakanur,
Theni District.

Copy To:-

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.C.MUTHU SARAVANAN, ADVOCATE IN SR No. 93524

SJI

TE/BK/SAR-2 : 07/12/2018 : 2P/5C

Cr1.O.P.[MD].No.19606 of 2016 and
Cr1.M.P.(MD).Nos.9886 and 9906 of 2016
30.10.2018