



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 04.04.2018
CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WEB COPY

Crl. OP (MD)No.15498 of 2013
and
MP(MD)No.1 and 2 of 2013

1.Coastal Energen Private Limited,
through its vice President,
N.K.Balaji

2.N.K.Balaji

... Petitioners

Vs.

Karuppasamy

... Respondent

Prayer : This Criminal Original Petition is filed Under Section 482 of Criminal Procedure Code to call for the records relating to the private complaint in C.C.No.770 of 2012 on the file of the Fast Track Court (Magisterial Level), Thoothukudi and quash the same as illegal.

For Petitioner	: Mr.M.Ajmal Khan, Senior Counsel for M/s.Ajmal Associates
For Respondent	: No appearance

ORDER

The respondent herein filed a private complaint under Section 200 of Cr.PC r/w 138 of the Negotiable Instruments Act before the learned Judicial Magistrate No.I, Thoothukudi. The complaint was taken on file in CC No.770 of 2012 and summons were issued to the petitioners in this O.P. To quash the said complaint, this O.P has been filed. Though notice in this petition has been served on the respondent and his name is also printed in the cause list, there is no representation on the side of the respondent/complainant.

2.The learned Senior Counsel appearing for the petitioners/accused 1 and 2 pointed out that a complaint under Section 138 r/w 141 of the Act would lie only if the cheque in question is returned for want of funds. Of course, the offence would be attracted even if the cheque is returned for other reasons such as stoppage of payment issued by the drawer or the account is closed etc., But then, in this case, the cheques in question have been returned by the bank with an endorsement "drawers signature required".

3.The learned Senior Counsel for the petitioners would submit that the account in question is maintained only by the first petitioner company and that the authorized signatory is the managing



director. In the present case, the cheques in question have not been signed by the managing director. Instead, it was signed by the second petitioner herein who was working as an employee of the petitioner company. He was not the authorized signatory. In this case, the respondent herein has not filed any complaint alleging that the commission of offence under Section 420 of IPC. If such a complaint had been lodged, then it would be a different matter altogether. The respondent has filed the impugned complaint only by invoking the provisions of the N.I.Act, 1881. Therefore, in as much as the essential ingredients of Section 138 of The N.I.Act are not present in this case, this Court will have to necessarily quash the impugned proceedings. In any event, no case has been made out against the petitioners. According to the complaint, it is only the second petitioner herein who has signed the cheques in question. Before proceeding to argue the matter on merits, the learned Senior Counsel appearing for the petitioners pointed out that the complainant was the Panchayat President and that some civil dispute arose between the first petitioner company and him. In order to resolve the dispute, it was agreed to pay him a sum of Rs.7,00,000/-.

4.It is seen from the records that a sum of Rs.7.00 lakhs was actually transferred in favour of the respondent. This stand of the learned Senior Counsel is fully reflected in the reply notice given by the petitioners herein on 26.10.2010 in response to the statutory notice issued by the respondent.

5.Taking note of all these aspects, this Court comes to the conclusion that no purpose will be served by keeping the impugned prosecution alive. It is a clear abuse of legal process. Therefore, the impugned prosecution is quashed. This petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To
The Judicial Magistrate.
Fast Track Court (Magisterial Level),
Thoothukudi.

+1cc to M/S.Ajmal Associates, Advocate SR.No. 59813

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and

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