



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 07.02.2018
CORAM:

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

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Crl.O.P. (MD) No.9344 of 2013
and
M.P. (MD) No.1 of 2015

Akshaya Vidyalaya Charitable Trust
Rep by its Managing Trustee E.N.Palanisamy
Son of K.Nanjappa Gounder, Cauvery Ammal Campus,
Akshaya Nager, Seelapatti Post,
Dindigul.

...Petitioner/Accused

Vs.

Manoharan

...Respondent/ Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for records relating to C.C.No.84 of 2013 on the file of Judicial Magistrate No.II, Dindigul and quash the same.

For Petitioners : Mr.T.Pon Ramkumar
For Respondent : Mr.N.Anantha Padmanaban

O R D E R

The petitioner herein is the accused in C.C.No.84 of 2013 on the file of Judicial Magistrate No.II, Dindigul. The petitioner is the Managing Trustee of the Akshaya Vidyalaya Charitable Trust, situated in Cauvery Ammal Campus, Akshaya Nager, Seelapatti Post, Dindigul. Now, he has filed this application to call for the records to quash C.C.No.84 of 2013 and quash the same.

2.The case of the respondent is that on 01.09.2012 the petitioner obtained a hand loan of Rs.20,00,000/- from him, for which, the petitioner has given two post-dated cheques to the respondent. When the said cheques were presented in Punjab National Bank, Dindigul, the same were returned with endorsements "Funds insufficient" and "Payment stopped by drawer". After sending notice to the petitioner/Accused, the respondent laid a complaint before the learned Judicial Magistrate No.II, Dindigul, for an offence punishable under Section 138 r/w.142 of the Negotiable Instruments Act, 1881.

3.The first and foremost contention raised by the learned counsel appearing for the petitioner herein is that the cheques were issued by the petitioner's in the capacity of Managing Trustee of Akshaya Vidyalaya Charitable Trust. On the other hand, the



respondent herein filed a complaint before the learned Judicial Magistrate No.II, Dindigul, by adding this petitioner as a Managing Director of Mookambiga Spinning Mills Private Limited. Accordingly, the drawer of the cheque was not included as an accused in this case. Admittedly, Mookambiga Spinning Mills Private Limited and Akshaya Vidyalaya Charitable Trust are all different entities. Even though the person, who signed the cheques, viz., Mr.E.N.Palanisamy, is the Managing Director of the Mookambiga Spinning Mills Private Limited, both the trust and the mill are two different legal entities. Since the cheques have been issued on behalf of the Akshaya Vidyalaya Charitable Trust, we cannot come to the conclusion that the cheques were issued by the petitioner. But without noting that aspect the case has also been taken on file by the learned Judicial Magistrate No.II, Dindigul.

4.The petitioner herein further added that on 27.08.2012 itself he had sent an intimation to the Branch Manager, Catholic Syrian Bank Limited, Palani Road, Dindigul, in which, he stated that two cheques were misplaced by one M.Thangarasu, due to which, he requested the bank not to honour the cheques, if the same are presented. Furthermore, he made a paper publication to the effect that the cheques in question were missing on 27.08.2012 and only thereafter, on 10.12.2012, the respondent herein issued notice to the petitioner stating that the cheques issued by the petitioner herein for Mookambiga Spinning Mills Private Limited was dishonored on 05.02.2012. Reliance is placed to the judgment reported in CDJ 2018 MHC 825 (J.Jeykumar Vs. R.Selvaraj) 2018 (1) CTC 194, wherein it has been held as follows:-

11.From the aforesaid finding, we find that after analysing all the provisions and having noticed the different decisions rendered by this Court, the three-judge Bench arrived at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning a company as an accused is imperative. Hence in this case, we find no reason to refer the matter to the larger Bench"

5.Furthermore, in the judgment reported in AIR 2012 Supreme Court 2795 (Aneeta Hada . M/s.Godfather Travels & Tours Pvt. Ltd. With Anil Hads, v. M/s.Godfather Travels & Tours Pvt. Ltd. With Avnish Bajaj v.State and Ebay India Pvt. Ltd. v. State and another.) it has been held as follows:

48.Keeping in view the anatomy of the aforesaid provision, our analysis pertaining to Section 141 of the Act would squarely apply to the 2000 enactment. Thus adjudge, the director could not have been held liable for the offence under Section 85 of the 2000 Act. Resultantly, the Criminal Appeal No.1483 of 2009 is allowed and the proceeding against the appellant is quashed. As far as the company is concerned, it was not arraigned as an accused Ergo, the proceeding as initiated in the existing incarnation is not



maintainable either against the company or against the director. As a logical sequeter, the appeals are allowed and the proceedings initiated against Avnish Bajaj as well as the company in the present form are quashed.

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6. Considering the observations made by this Court as well as by the Hon'ble Apex Court, it is necessary to include the company in the proceedings initiated under Section 138 of the Negotiable Instruments Act as an accused. Applying the principles laid down in the above said judgments, in the case on hand, the respondent herein has not added the company in respect of the disputed cheques. The learned Judicial Magistrate No.II, Dindigul, without noting that aspect, has taken cognizance and issued summons to this petitioner. Furthermore, at the time of taking cognizance the learned Magistrate has not considered the judgment of the Hon'ble Apex Court in the case of Damodar S.Prabhu Vs. Sayed Babalal H. reported in CDJ 2010 SC 398, which relates to the directions given by the Hon'ble Apex Court with regard to the stage, in which the matter is to be compounded.

7. Accordingly, this Criminal Original Petition is allowed and the proceedings in C.C.No.84 of 2013 pending against the petitioner before the Judicial Magistrate Court No.II, Dindigul shall stand quashed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

The Judicial Magistrate No.II,
Dindigul.

+1cc to M/S.T.Pon Ramkumar, Advocate SR.No. 46749

CrI.O.P.No.9344 of 2013
07.02.2018

smi/cp
JM/JC/SAR 3/18.04.2018/3P/3C