

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2019

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL.OP.NO.19506 OF 2013

AND

MP.NO.1 OF 2013

V.M.Insaf Manager

.. Petitioner

- Vs -

M/s.Andhra Tools & Tackles,
rep. by its Partner Mr.Mustafa.S
Having office at
Perianna Maistry Street,
Chennai-600 001.

.. Respondent

Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in C.C.No.428 of 2012 originally filed on the file of the learned VII Metropolitan Magistrate, George Town, Chennai now transfer to on the file of the Fast Track Court No.IV (Metropolitan Magistrate Level), George Town, Chennai and quash the same.

For Petitioner : Mr.K.M.Balaji

For Respondent : No Appearance

ORDER

This Criminal Original Petition has been filed to call for the records in C.C.No.428 of 2012 on the file of the learned Fast Track Court No.IV, Metropolitan Magistrate, George Town, Chennai and quash the same.

2. The respondent filed a private complaint under Section 200 Cr.P.C for the offence under Section 138 of Negotiable Instruments Act. The said complaint was taken on file by the learned Magistrate in C.C.No.428 of 2012. This petitioner has been arrayed as A2 in the said complaint. During the pendency of the Calendar Case, the second respondent therein/A2 filed the present petition under Section 482 Cr.P.C to quash the complaint in CC.No.428 of 2012 against him.

3. The learned counsel for the petitioner would submit that the present petitioner is only the Manager of the A1's proprietorship concern. He is not the drawer of the cheque, who has been working as Manager in A1's Firm. A1/proprietorship concern has no legal liability, the petitioner is figured as employee of the firm. The learned counsel also placed reliance on the judgment of the Apex Court in the case of Raghu Lakshminarayanan Vs. Fine Tubes reported in [(2007) 5 Supreme Court Cases 103]. The employees of the concern cannot be held liable and vicarious.

4. None appeared on behalf of the respondent. Heard the learned counsel for the petitioner and carefully perused the complaint filed by the respondent.

5. The respondent averred in his complaint that the petitioner is doing day-to-day affairs of the firm. Though the proprietor of the Firm signed the cheque, all the transactions hold by the present petitioner/A2. After return of the cheque, notice was sent to A1 and A2, the present petitioner has not given any reply stating that he has not aware of the cheque and also he is not responsible for the same. When the respondent has clearly averred that the present petitioner is only doing all the business transactions and also gave an undertaking when he issued statutory notice, he has not sent any reply. There is no quarrel with the proposition of law laid down by the Hon'ble Supreme Court in various decisions and also there is no quarrel with the contention of the learned counsel for the petitioner that the drawer of the cheque alone is responsible as per Section 138 of Negotiable Instruments Act. In this case, except signing the cheque by the proprietor of the firm, all the transactions held by the present petitioner only.

6. This Court is of the view that this is not the fit case to invoke Section 482 Cr.P.C. Accordingly, this Criminal Original petition is dismissed. The petitioner is at liberty to take all his defence before the Trial Court during trial. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS VI)
//True Copy//

Sub Assistant Registrar

KMI

To

1. The VII Metropolitan Magistrate,
George Town, Chennai.

+1cc to Mr.K.M.Balaji, Advocate, S.R.No.104712

Cr1.OP No.19506 of 2013

VSNI(CO)
CS/03/02/2020



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