

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2019

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.22705 of 2018
and CRL.M.P.Nos.12609 & 12610 of 2018

R.Ramesh ... Petitioner/4th Accused
[wrongly given by complainant as
T.R.Ramesh]

Vs.

Dr.R.Krishnakumar ...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the entire records and quash the proceedings in S.T.C.No.46 of 2016 on the file of the Judicial Magistrate No.3, Salem so far as the petitioner/4th accused therein is concerned.

For Petitioner : Mr.D.Shivakumaran

For Respondent : No appearance

O R D E R

The Criminal Original Petition has been filed to quash the proceedings in S.T.C.No.46 of 2016, on the file of the learned Judicial Magistrate No.3, Salem.

2.The learned counsel for the petitioner would submit that the petitioner is arrayed as fourth accused. The respondent instituted the complaint for the offence punishable under Sections 138, 141 and 142 of Negotiable Instruments Act. There are totally four accused. The crux of the complaint is that the first accused persuaded the complainant to invest in Abirami Traders allured him with huge profits. The second accused assured interest at the rate of 18% per annum and third accused to repose confident on the other accused persons misleading assurances. Further, alleged that the petitioner suggested investments with the said Abirami Traders, for which, he has also received interest on his investments from 01.10.2011 to 01.10.2012 for the investment of Rs.91,50,000/-. On 11.01.2015 all the accused persons met with the defacto complainant and expressed their misdeed in payment and

expressed their inability to pay interest promptly. Therefore, he issued cheque and it was presented for collection, but, it was returned dishonoured for the reason that account closed. Thereafter, he issued a statutory notice and lodged a complaint for the offence punishable under Sections 138 read with 141 of Negotiable Instruments Act.

3.The learned counsel for the petitioner submitted that the offences alleged by respondent are not at all attracted as against the petitioner and the complaint itself is an illegal and unsustainable. The trial Court ought not to have taken cognizance for the offence under Section 138 read with 141 of Negotiable Instruments Act. Admittedly, the alleged cheque was issued by the first accused in which the capacity of proprietor of Abirami Traders.

4.Further, he submitted that they attract under Section 141 of Negotiable Instruments Act. There must be a company or partnership firm wherein persons inducted as partners or directors. Then only the offence under Section 141 of Negotiable Instruments Act would attract. As far as the petitioner is concerned, he is a Chartered Accountant and no way connected with the first and second accused. Therefore, he prayed for quashing the complaint.

5.Heard, the learned counsel appearing for the petitioner, though the notice has been served to the respondent and his name also printed in the cause list, no one appeared on behalf of the respondent.

6.It is seen from the records that the complaint instituted by the respondent against the petitioner and others under Section 138 read with 141 of Negotiable Instruments Act. The petitioner arrayed as fourth accused. The allegation against the petitioner is that the petitioner is being a Chartered Accountant, who has employed with the third accused as his office manager and the first and second accused engaged the services of the petitioner. All the accused persons persuaded the complainant to invest in Abirami Traders promised him with huge profits. Therefore, the respondent invested a sum of Rs.91,50,000/- into Abirami Traders. Thereafter, failed to return any profits on the mutual understanding with the first accused issued a cheque in favour of the respondent for a sum of Rs.1,14,94,575/- dated 12.01.2015 in the capacity of proprietor of Abirami Traders.

7.It is also seen from the complaint that the first accused is the proprietor of M/s.Abirami Traders, the second accused is the mandate holder of the Abirami Traders, the

third accused is the manager of T.N.Ramadoss & Co. and the petitioner/fourth accused is a Chartered Accountant of T.N.Ramadoss & Co.

8. Admittedly, the petitioner is a Chartered Accountant running his profession in the name of T.N.Ramadoss & Co. in which the third accused is working as a manager and they have no way connected with the first and second accused. Further, the alleged impugned cheque was issued in the capacity of proprietor of M/s. Abirami Traders by the first accused. The petitioner is neither signatory of the cheque nor the proprietor of M/s. Abirami Traders. The proprietor means concern owned by only one person. The proprietor concern has no partners or directors. If it is a partnership firm, it has partners and if it is a company, it has directors. Therefore, the complaint is not at all maintainable under Section 141 of Negotiable Instruments Act as against all the accused persons. Insofar as, the petitioner is concerned, he is a Chartered Accountant working for M/s. Abirami Traders owned by the first accused.

9. That apart, the signatory of the cheque issued by the first accused that too in the capacity of proprietor of M/s. Abirami Traders. Insofar as, the other accused persons are concerned, they are no way connected with M/s. Abirami Traders. As such the complaint is not at all maintainable as against other accused persons. The learned trial Judge ought not to have taken cognizance as against accused 2 to 4 in the complaint since the first accused is the signatory in the capacity of proprietor. Therefore, the complaint cannot be sustainable as against the petitioner and other accused persons with the first accused. Though, the accused 2 and 3 have not filed any petition to quash the proceedings, they are also entitled to benefit of this order. In this regard, it is relevant to rely the paragraph No.23 of the judgment of Hon'ble Supreme Court of India in the case of Vajrapu Sambayya Naidu and Others vs. State of A.P. and Others reported in (2004) 10 SCC 152, held as follows:

23. In this view of the matter, this appeal succeeds and the appellants are acquitted of all the charges levelled against them. We notice that the cases of Accused 1 and Accused 4, namely, Thammireddy Apparao and Lanka Tatayyalu, stand on the same footing as that of the appellants. For some reason they have not preferred appeals before this Court, but we feel that in the interest of justice they are also entitled to the benefit of this judgment. We, therefore, order their acquittal as well. The appellants herein as well as Accused 1 and 4, namely, Thammireddy Apparao and Lanka Tatayyalu, if in custody, shall be released forthwith, if not required in connection with any other case. This appeal is accordingly

allowed.

10. In view the same, this Criminal Original Petition is allowed and the proceedings in S.T.C.No.46 of 2016 on the file of the learned Judicial Magistrate No.3, Salem is hereby quashed insofar as the accused 4 is concerned. Considering the case is of year 2016, the learned Judicial Magistrate No.3, Salem is directed to complete the trial within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

pam

To

1. The Judicial Magistrate No.3, Salem.

2. -do-Through' The Chief Judicial Magistrate, Salem District

Copy To

The Section Officer, Criminal Section, High Court, Madras

+1cc to Mr.D.Shivakumaran, Advocate SR.No.15998

CRL.O.P.No.22705 of 2018
and CRL.M.P.Nos.12609 & 12610 of 2018

EV(CO)
GMY(04/04/2019)

WEB COPY