

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2019

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.NOS.16699, 16704, 16707, 16711, 16717,
16724, 16729, 16730, 16735 & 16738 OF 2019

Ajay Agrawal
S/o.Rameshwar Agrawal

....Petitioner in all Crl.OPs.

.Vs.

M/s.Integrated Finance Company Limited.
Represented by its Executive and Power Agent
Sri.S.Velayutham,
Vairams No.112, Sir Thyagaraya Road,
Thyagaraya Nagar,
Chennai-17.

.... Respondents
in Crl.O.P.No.16699 of 2019 and
Crl.O.P.Nos.16704, 16735, 16738 of 2019

M/s.Integrated Finance Company Limited.
Represented by its Executive and Power Agent
Sri.S.Sivagnanam
Vairams No.112, Sir Thyagaraya Road,
Thyagaraya Nagar, Chennai-17.

.... Respondents
in Crl.O.P.Nos.16730, 16729,
16724, 16707, 16711, 16717 of 2019

PRAYERS:-

Crl.O.P.No.16699 of 2019:-

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.3304 of 2016 formerly on the file of XVII Metropolitan Magistrate Court, Saidapet, Chennai and presently pending on the file of VII M.M. Court, George Town, Chennai-1 and quash the entire proceedings.

CRL OP No.16704 of 2019:-

To call for the entire records in CC.No.875/2016 formerly on the file of XVII Metropolitan Magistrate Court, Saidapet, Chennai and presently pending on the file of VII M.M Court, George Town, Chennai-1 and quash the entire proceedings as against the petitioner.

CRL OP No.16707 of 2019:-

To call for the entire records in CC.No.873/2016 formerly on the file of XVII Metropolitan Magistrate Court, Saidapet, Chennai and presently pending on the file of VII M.M.Court, George Town, Chennai-1 and quash the entire proceedings as against the petitioner.

CRL OP No.16711 of 2019:-

To call for the entire records in CC.No.872/2016 formerly on the file of XVII Metropolitan Magistrate Court, Saidapet, Chennai and presently pending on the file of VII M.M Court, George Town, Chennai-1 and quash the entire proceedings as against the petitioner.

CRL OP No.16717 of 2019:-

To call for the entire records in CC.No.3303/2016 formerly on the file of XVII Metropolitan Magistrate Court, Saidapet, Chennai and presently pending on the file of FTC-IV, George Town, Chennai-1 and quash the entire proceedings as against the petitioner.

CRL OP No.16724 of 2019:-

To call for the entire records in CC.No.874/2016 formerly on the file of XVII Metropolitan Magistrate Court, Saidapet, Chennai and presently pending on the file of FTC-IV, George Town, Chennai-1 and quash the entire proceedings as against the petitioner.

CRL OP No.16729 of 2019:-

To call for the entire records in CC.No.64/2017 formerly on the file of XVII Metropolitan Magistrate Court, Saidapet, Chennai and presently pending on the file of FTC-IV, George Town, Chennai-1 and quash the entire proceedings as against the petitioner.

CRL OP No.16730 of 2019:-

To call for the entire records in CC.No.306/2017 formerly on the file of XVII M.M.Court, Saidapet, Chennai and presently pending on the file of FTC-IV, George Town, Chennai-1 and quash the entire proceedings as against the petitioner.

CRL OP No.16735 of 2019:-

To call for the entire records in CC.No.194/2017 formerly on the file of XVII M.M.Court, Saidapet, Chennai and presently pending on the file of FTC-IV, George Town, Chennai-1 and quash the entire proceedings as against the petitioner.

CRL OP No.16738 of 2019:-

To call for the entire records in CC.No.1232/2016 formerly on the file of XVII M.M.Court, Saidapet, Chennai and presently pending on the file of FTC-IV, George Town, Chennai-1 and quash the entire proceedings as against the petitioner.

For Petitioner : Mr.R.Amizhdhu
(in All Crl.OPs)

COMMON ORDER

These Criminal Original Petitions have been filed seeking to quash the proceedings initiated by the respondent Company, for an offence under Section 138 of the Negotiable Instruments Act.

2.The learned Counsel for the petitioner has raised one common ground in all these petitions to the effect that the petitioner as the Managing Director has signed the cheques on behalf of the Company and postdated cheques were issued to the respondent. Subsequently, the petitioner had resigned from his post as Managing Director on 30.09.1998 and Form-32 is also relied upon in order to substantiate the said fact. Therefore, the learned counsel submitted that as on the date when the cheques were presented by the respondent, the petitioner was no more the Director in the Company, and therefore, the proceedings against the petitioner is illegal and an abuse of process of Court.

3.The respondent has been served with the notice and his name has also been printed in the cause list. There is no appearance for the respondent, and therefore this Court proceeds

to decide these petitions on merits, based on the records available before this Court.

4.It is seen from records that the petitioner had filed a similar quash petitions with regard to other complaints that were filed by the respondent, in Crl.OP.Nos.21956 to 21960 of 2016. This Court by an order dated 24.11.2016, dismissed all the petitions on the ground that the petitioner being the signatory of the cheque cannot escape the liability, and therefore this Court directed the proceedings to continue after dispensing with the appearance of the petitioner.

5.This order was challenged before the Hon'ble Supreme Court in Crl.A.Nos.586-594 of 2018. The Hon'ble Supreme Court by an order dated 20.04.2018, allowed all the appeals. The relevant portion of the order is extracted hereunder:

"The case set up by the appellant before the trial Court was that he had resigned as Director of the company much before the cheque was dishonoured and the factum of resignation was proved by filing certified copy of Form No.32 which was submitted before the Registrar of Companies on a date before the cheque was presented and dishonoured. He refers to the judgment of this Court in 'Anita Molhotra .Vs. Apparel Export Promotion Council and Anr.' [(2012) 1 SCC 520] wherein it is held that annual return along with Form No.32 which is filed before the Registrar of Companies is a public document and certified copy thereof was admissible in evidence and that it should have been looked into and acted upon by the trial court.

Having regard to the aforesaid law laid down by this Court, these appeals are allowed and the appellant is deleted from the array of parties/accused in the trial pending in CC No.2362/1999, CC.No.1854/2000, CC.No.2201/1999, CC.No.6633/1999, CC.No.2445/1999,CC.No.4200/1999 and CC.No.5344/2000 titled as 'Integrated Finance Company v. M/s.Trident Steels Limited and Ors".

6.The facts of the present case and the ground taken by the learned counsel for the petitioner in the present case is also similar to the grounds that were raised before the Hon'ble Supreme Court. This case is also virtually covered by the above said Order passed by the Hon'ble Supreme Court.

7. Even in this case, the petitioner had resigned as a Director of the Company much before the cheques were presented and dishonored and the same is substantiated by filing of Form-32 which was submitted before the Registrar of Companies. Therefore, the continuation of the present proceedings as against the petitioner is an abuse of process of Court and the reasoning given by the Hon'ble Supreme Court in the Order referred supra, will apply in all force to the present cases also.

In the result, the proceedings in C.C.Nos.3304, 875, 873, 872, 3303, 874 & 1232 of 2016 & C.C.Nos.64, 306, 194/2017, pending on the file of the learned VII M.M.Court, George Town, Chennai, is hereby quashed and all these Criminal Original Petitions are allowed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

KP

1. XVII Metropolitan Magistrate Court, Saidapet, Chennai.
2. VII M.M. Court, George Town, Chennai-1.
3. FTC-IV, George Town, Chennai-1.

Copy To

The Section Officer,
Criminal Section,
High Court, Madras-104.

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AP(CO)
CS/06/08/2019