IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2019

CORAM:

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

Crl.O.P.Nos.8062 to 8064 of 2014
and M.P.Nos.1,1,1 and 2,2,2 of 2014

M.Thiagarajan, ...Petitioner in both Crl.O.Ps. / Accused.2

Vs.

Hindustan Petroleum Corporation Ltd.,
rep. By its Manager-Customer Relations,
C.Gokulkrishnan,
Aviation Service Facility
Chennai Airport, Pallavaram Cantonment,
Chennai 600 043.
...Respondent in both Crl.O.Ps. / Complainant

Common Prayer: Criminal Original Petitions filed under section 482 of Criminal Procedure Code, to call for the records relating to C.C.Nos.942, 164 & 1504 of 2011, pending on the file of the learned XIII Metropolitan Magistrate, FTC-1, Egmore and quash the same as against the petitioner.

(In both Crl.O.Ps.)
For Petitioner : Mr.M.Sathiavel

For Respondent : Mr.M.Vijayan
for M/s.King and Patridge

COMMON PRAYER

These petitions have been filed to quash the proceedings in C.C.No.942 of 2011, on the file of the learned Metropolitan Magistrate, FTC-1, Egmore, Chennai.

2. The learned counsel for the petitioner submitted that the respondent filed a private complaint before the learned XIII Metropolitan Magistrate, Egmore, Madras, for the offence punishable under Section 138 and 142 of Negotiable Instruments Act alleging that two cheques bearing Nos.073186 and 073187 for a sum of Rs.1,00,00,000/- each, drawn on Axis bank, when presented by the petitioner was returned "payment stopped by

Drawer". The learned counsel for the petitioner submitted that the alleged cheques issued by the company/1st accused on the date of cheque viz., 16.08.2010, the petitioner was never been a Managing Director of the 1st accused/company and he got retired from the 1st accused company as early as on 05.09.2009, itself. Therefore, the petitioner is not at all liable for the offence punishable under Section 138 of Negotiable Instruments Act. Therefore, he prays to quash the entire proceedings.

3.Per contra, the learned counsel for the respondent submitted that he has filed a typed set and also submitted that after the alleged date of retirement i..e, 05.09.2009, there are several documents signed by the petitioner as Managing Director of the 1st accused company. Even in Form 8 submitted before the Registrar of Companies dated 09.11.2009, the petitioner has signed as Managing Director of 1st accused Company. Thereafter on 24.12.2009, the letter addressed to DGCA, Chennai from the 1st accused company, was signed by the petitioner in the capacity of Managing Director and in the Month of February 2010, the petitioner has sent a message in the In-Flight Magazine of the company in the capacity of Managing Director. The learned counsel for the respondent submitted that he has sufficient materials to prove that the petitioner has acted as Managing Director during the period of issuance of cheque. Therefore, it is a question of fact and the petitioner was not a Managing Director at the time of issuance of cheque is not a ground to quash the proceedings and prays for dismissal of the petition.

4.Heard both sides and perused the materials placed before this Court.

5. It is seen that the respondent initiated proceedings under Section 138 and 142 of Negotiable Instruments Act as against the petitioner and others in which the petitioner arrayed as 2nd accused. He has been implicated as 2nd accused in the capacity of Managing Director of 1st accused company viz.,M/s.Paramount Airways Pvt. Ltd. The only point raised by the learned counsel for the petitioner at the time of issuance of alleged cheque, the petitioner is not the Managing Director of the 1st accused company and also produced Form 32. It reveals that the petitioner retired from the 1st accused company as early as on 05.09.2009. Whereas the documents filed by the respondent reveals that on 09.11.2009, the petitioner signed as Managing Director in Form 8 submitted to the Registrar of Companies and in the letter addressed to DGCA, Chennai, dated 24.12.2009. There are other documents which revealed that the petitioner signed as Managing Director of the 1st accused company. Therefore, on the documents produced by the petitioner alone, the proceedings in C.C.No.942 of 2011 cannot be initiated since there are other documentary evidence, which reveals that even

after the retirement, viz., 05.09.2009, the petitioner has signed as Managing Director of the 1st accused company. The points raised by the petitioner cannot be considered in this quash petition since it involves question of facts and it has to be considered only during the trial.

6.In view of the above discussions, this Court is not inclined to entertain these petitions. Accordingly, these Criminal Original Petitions are dismissed. Consequently, connected miscellaneous petitions are also closed.

7.Considering the calendar case is of the year 2011, the learned XVIII Metropolitan Magistrate, FTC-I, Egmore, Chennai, is hereby directed to complete the trial within a period of three months from the date of receipt of copy of this order. It is also made clear that pendency of the other Criminal Original Petitions before this Court are not an impediment for the trial Court to proceed with the trial.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

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Sub Assistant Registrar

To

1.The XVIII Metropolitan Magistrate,
FTC-I, Egmore,
Chennai.

2.The XIII Metropolitan Magistrate,Egmore,
Chennai-8

+3cc to Mr.King & Partridge, Advocate, S.R.No.29884 to 29886

Crl.O.P.Nos.8062 to 8064 of 2014
and M.P.Nos.1,1,1 and 2,2,2 of 2014

RSI(CO)
SSM(27/07/2019)