



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.10.2019

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD).No.3491 of 2017

and

Crl.M.P.(MD) No.2613 of 2017

WEB COPY

1) Sudharsan
2) M.Vijayakkumar ... Petitioners/Accused 1 & 2

Vs.

S.Rajasoundaram ... Respondent/ *De facto* Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the records relating to S.T.C.No.225 of 2016 on the file of the Judicial Magistrate No.II, Fast Track Court at Magisterial Level, Madurai District, quash the same.

For Petitioner : Ms.T.Akalya
For Respondent : Mr.J.Praveen

O R D E R

This Criminal Original Petition has been filed seeking to quash S.T.C.No.225 of 2016, pending on the file of Judicial Magistrate No.II, Fast Track Court at Magisterial Level, Madurai.

2. The respondent filed a complaint under Section 138 of the Negotiable Instruments Act against the petitioners and also the Partnership Firm on the ground that, the cheque that was issued in his favour towards his contribution to the Partnership Firm was dis-honoured.

3. The learned counsel appearing on behalf of the petitioners submitted that, admittedly in this case, the respondent is the partner of the Firm under the name and style of Bima Bricks Industries. The cheque is alleged to have been received by the respondent towards the contribution/ share of the respondent in the Partnership Firm. Therefore, the learned counsel submitted that, there is no debt or liability arising in this case, till the accounts are finalized and the amount payable to each of the partner is determined. The learned counsel submitted that, there was no existing debt/ liability as on that date, when the alleged cheque was drawn in favour of the respondent.

4. Per contra, the learned counsel appearing on behalf of the respondent submitted that the petitioners made the respondent to



invest money in the Partnership Firm and only after investing money, the respondent came to know that the petitioners are not effectively running the Firm and all the money has been swindled. The learned counsel further submitted that, it is true that there was a partnership deed entered into between the two parties. However, the same was not acted upon and there was an existing debt/ liability on the part of the Firm and the partners and there is no ground to interfere with the proceedings pending before the Court below.

5. This Court has carefully considered the submission made on either side and the materials available on record.

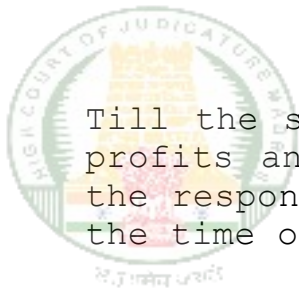
6. The main issue that has been raised in this case is as to whether there was any existing debt / liability as on the day when the cheque was drawn in favour of the respondent by the Partnership Firm and the other partners.

7. Admittedly in this case, there is a partnership deed entered into between the two parties and the respondent has also contributed his share in the Firm. The partnership deed itself provides that, the profit and loss of the Partnership Firm shall be shared in a particular ratio. The respondent was not happy in the way in which the Partnership Firm was run and therefore, he wanted to get out of the firm by receiving back the contribution / share given by him. The cheque is said to have issued by the Firm and the other partners only towards his contributions/ share.

8. Section 11 of the Partnership Act, 1932 specifically provides for determination of the rights and duties of the partners by contract between the partners. The wordings under Section 11 of the Partnership Act makes it very clear that, the relationship of the partners shall be determined by the contract between them, subject, of course to the provisions of the Act. In this case, there was a specific contract between the parties by way of entering into the partnership deed and the same provided for the manner in which rights and liabilities shall be determined between the parties.

9. It is also relevant to take note of Section 13 of the Partnership Act, 1932 which deals with the mutual rights and liabilities between the partners. The nature of the liabilities in between the Firm and the partner is joint and several.

10. If the respondent was not happy in the manner in which the business was run by the other partners, he should have worked out his remedy by seeking for dissolution of Firm or for rendition of accounts and for the settlement of his share / contribution which he invested at the time of entering the Partnership Firm .



Till the share of the respondent is determined in relation to the profits and losses incurred by the Firm, there is no question of the respondent claiming for the entire contribution made by him at the time of entering into the Partnership Firm.

11. It is therefore clear that, as on the day the alleged cheque is said to have been executed in favour of the respondent, there was no existing debt/ liability and the amount has not been determined as on that date. Previously, even on the date when the cheque is said to have been issued by the respondent, he continued to be a partner in the Firm.

12. In the considered view of this Court, the respondent is not entitled to maintain the complaint under Section 138 of the Negotiable Instruments Act against the Firm and its partners, since there was no determined debt / liability on the date of the alleged drawal of cheque in his favour. Therefore, the private complaint filed by the respondent is an abuse of process of Court and the same cannot be sustained in the eye of law.

13. In the result, the proceedings in S.T.C.No.225 of 2016 on the file of the Judicial Magistrate No.II, Fast Track Court at Magisterial Level, Madurai District is hereby quashed. Accordingly, the Criminal Original Petition is allowed. Consequently, connected Crl.M.P.(MD) No.2613 of 2017 is closed.

Sd/-

Assistant Registrar (co)

// True Copy //

Sub Assistant Registrar(CS)

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To

The Judicial Magistrate No.II,
Fast Track Court(Magisterial Level),
Madurai District.

+1 CC to M/s.S.TAMIZHARASAN, Advocate (SR-92699[F] dated 17/10/2019)

Order made in
Crl.O.P. (MD) .No.3491 of 2017
17.10.2019

_KM/ (04.11.2019) 3P 3C