

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.O.P.Nos.17390, 17391 & 26415 of 2013
and M.P.Nos.1,1 and 1 of 2013

1.S.Latha
2.Parvathi

..Petitioners/Accused 3 & 4
in all the above Crl.O.Ps.

Vs

M/s.Connect Cargo Private Limited
Rep. by its Manager R.Viswanathan
No.58/59, Rajaji Salai
PPJ Chambers, Chennai-600 001

..Respondent /Complainant
in all the above Crl.O.Ps.

Prayer in Crl.O.P.17390 & 17391/2013:- Petition filed under Section 482 of Cr.P.C., praying to call for the records in connection with C.C.Nos.766 and 765 of 2013 on the file of learned VII Metropolitan Magistrate Court, George Town, Chennai and quash the same.

Prayer in Crl.O.P.26415 of 2013:- Petition filed under Section 482 of Cr.P.C., praying to call for the records in connection with C.C.No.1144 of 2013 on the file of learned IV Metropolitan Magistrate Court, George Town, Chennai and quash the same.

For Petitioners: Mr.A.Saravanan

For Respondent : Mr.E.Jayasankar

COMMON ORDER

The respondent filed a private complaint against the petitioners and two others under Section 200 Cr.P.C., for the offence under Section 138 of the Negotiable Instruments Act, 1881 as amended by Act of 1988, before the VII and IV Metropolitan Magistrate Court, George Gown, Chennai, respectively. The learned Magistrate has taken the complaint on the file in C.C.Nos.766, 765 of 2013 and C.C.No.1144 of 2013 and issued summons to the petitioners herein and also A1 and A2. These petitioners have been arrayed as A3 and A4 in the said complaint. A3 and A4 have filed the present Crl.O.Ps., seeking

to quash the complaint stating that they have not actively participated in the day to day affairs of the company and A-2 is looking after the day to day affairs of the company. Therefore, these petitioners cannot be prosecuted. Therefore, the complaint against these petitioners have to be quashed.

2. The learned counsel for the petitioners would submit that in paragraph 6 of the complaint itself, it is stated that the 2nd accused is the director and signatory authority to the cheque along with others in the transaction with the complainant. The 2nd accused alone is looking after day to day affairs of the company and not these petitioners. The petitioners are only the Directors, but they have not participated in the day to day affairs of the company. Therefore, the complaint against them have to be quashed.

3. The learned counsel for the respondent would submit that at the time of issuance of the cheque and transaction with the respondent, these petitioners/A-3 and A-4 are also Directors of the A-1 company and that A-2 to A-4 are responsible for the affairs of A-1 company and they also approached the respondent herein and assured that they will repay the money and also when notice sent to all the accused, A-1 and A-4 received the notice and they have not sent any reply. A-2 and A-3 refused to receive the notice. Therefore, whether they are responsible or not cannot be decided at this stage and therefore, the complaints cannot be quashed.

4. Heard the learned counsel on either side and perused the records.

5. It is not in dispute that A-1 is the company, A-2 is the Director, one who has issued the cheque on behalf of A-1 company in favour of the respondent herein and that petitioners herein viz., A-3 and A-4 are the directors of the company during the relevant period of issuance of cheque, but they are not the directors responsible for the day to day affairs of the company. A reading of paragraph 6 of the complaint itself reveals that A-2 is the Director and signatory authority to the cheque, which itself shows that the disputed cheque was issued by A-2. The petitioners' signatures are not found in the cheques and no documents produced to show that these petitioners also actively participated in the day to day affairs of the company and also participated in the present transaction and also issuance of cheque. Therefore, in the absence of any material to show their active participation in the day to day affairs of the company, this court is inclined to quash the complaint against petitioners/A-3 and A-4. However, both A-1 and A-2 are responsible and the complaint shall be tried against them.

6. In view of the foregoing discussion, the Criminal Original Petitions are allowed. Connected Miscellaneous Petitions are closed. Since it is stated that now the case is pending before IV Fast Track Court, George Town, Chennai and that the complaint is pending from 2013, the learned Metropolitan Magistrate, IV Fast Track Court, George Town, Chennai, is directed to dispose of the cases in accordance with law, within a period of three months from the date of receipt of a copy of this order.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

nvsri

To

- 1.The VII Metropolitan Magistrate Court, George Town, Chennai.
- 2.The IV Metropolitan Magistrate, Fast Tract Court, George Town, Chennai.
- 3.The Section Officer, Criminal Section, High Court, Madras.

+1 CC to Mr.E.Jayasankar, Advocate sr 6241.
+1 CC to Mr.A.Saravanan, Advocate sr 6801.

Cr1.O.P.No.17390, 17391
& 26415 of 2013

RSI (CO)
SP(13/02/2020)

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