IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2020

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.No.19796 of 2013 and
Crl.M.P.No.1 of 2013

Sukumar Ramalingam ... Petitioner

Vs.

M/s.Canbank Factors Ltd.,
A Subsidiary of Canara Bank,
Represented by Power of Attorney Holder
and Senior Vice President Mr.R.Sadasivam,
Second floor, United India Building,
1028, Avanashi Road,
Coimbatore-641 018. ... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the entire records pertaining to proceedings in C.C.No.688 of 2012 pending on the file of the Judicial Magistrate No.II. Tiruppur and quash the same.

For Petitioner : M/s.S.T.Raja for
M/s.Om Sai Ram Assoiciate

For Respondent : No Appearance

ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.688 of 2012, pending on the file of the Judicial Magistrate No.II, Tiruppur.

2.The case of the 1st respondent/complainant is that the 1st accused is the company viz., M/s.Fast Flying Fashionss India Private Limited, Tiruppur, 2nd accused is the Managing Director and the petitioner/A6 and A3, A4, A5, A7 are its Directors. The respondent was engaged in the business of providing of Factoring facilities to different business organizations and the 1st accused company was liable to pay a sum of Rs.2,00,00,000/- being the total amount to the respondent. In discharge of the liability, the 1st accused issued four cheques as follows:-

Sl.No.	CHEQUE No. & Dated	Amount	Drawn on	Date of Presentation	Date of Cheque Return
1.	871569, Dt.23.04.2012	Rs.50,00,000/-	Corporation Bank	17.07.2012	18.07.2012
2.	871570, Dt.23.04.2012	Rs.50,00,000/-	Corporation Bank	17.07.2012	18.07.2012
3.	871571, Dt.23.04.2012	Rs.50,00,000/-	Corporation Bank	17.07.2012	18.07.2012
4.	871572, Dt.23.04.2012	Rs.50,00,000/-	Corporation Bank	17.07.2012	18.07.2012

3.When the respondent presented the said cheques through M/s.Canara bank, Tirupur, the cheques have been returned and dishonoured as "Exceeds Arrangement". The respondent issued a legal notice on 08.08.2012 to the 2nd accused and on receipt of the legal notice, the accused has not paid the cheque amount to the respondent. In keeping with the provisions of Section 141 r/w Section 138 and 142 of the Negotiable Instruments Act, the respondent preferred a complaint. Challenging the same, the present petition has been filed by the petitioner/A6.

4.The learned counsel for the petitioner would submit that the 1st accused is that company viz., M/s.Fast Flying Fashionss India Private Limited, Tiruppur, 2nd accused is the Managing Director and the petitioner/A6 and A3, A4, A5, A7 are its Directors. The petitioner has been made as an accused in this case on the strength of 141 of the Negotiable Instruments Act, on the ground that they are the Directors and hence, they are liable for the debt of the company.

5.He would further submit that the petitioner having resigned from the company, even before the dishonouring of cheques. Further, there is no specific averments against them except for the bald allegations that the petitioner is the Director of the 1st accused company and he has knowledge about the issuance of cheque. Further, he never took part in day-to-day affairs and was incharge of the 1st accused company.

6.In support of their claim, the petitioner has submitted Form No.32, in which it is found that the petitioner was resigned from the 1st accused company on 30.04.2012. Admittedly, the cheques have been dishonoured on 18.07.2012 after the resignation of the petitioner/A6. Hence, he prayed to quash the proceedings against the petitioner on these ground.

7.The respondent had been served with the notice of this

Criminal Original Petition on 13.01.2020, but he failed to appear before this Court. Thereafter, this Court by order dated 30.01.2020 directed the learned counsel for the petitioner to take paper publication and the same has been published and the name of the respondent has also been printed in the cause list. Despite taking all efforts, the respondent failed to appear before this Court or engage a counsel. Keeping this Criminal Original Petition further pending would only amount to piling up of the cases without any progress and hence, this Court decides to dispose of the Criminal Original Petition on merits.

8.On perusal of the complaint, it is seen that there is no specific averments as against the petitioner/A6. Further, it is seen that the petitioner has already resigned from the 1st accused company on 30.04.2012, as could be seen from Form.32. Admittedly, the cheques have been dishonoured on 18.07.2012.

9.Considering the facts and circumstances of this case, this Court finds that there is no specific averments against the petitioner herein and the petitioner having resigned from the company, even before the amount was borrowed by the 1st accused company and merely being a Director of the company is not sufficient to make a person liable under Section 141 of the Negotiable Instruments Act and further necessary and specific averment is that at the time of offence committed by the accused person to be shown as the persons incharge and responsible for the conduct of business of the company and such averments are essential for under Section 141 of the Negotiable Instruments Act. In this case there is no specific averments against the petitioner.

10. In view of the above, this Criminal Original Petition is allowed and the proceedings in C.C.No.688 of 2012, on the file of the Judicial Magistrate Court No.II, Tirupur as against the petitioner/A6 alone quashed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The Judicial Magistrate Court No.II,
Tirupur.

+1 cc to M/s. Om Sai Ram, Advocate, S.R.No.13757

Crl.O.P.No.19796 of 2013

RR(CO)
RN(20/05/2020)