IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 28.01.2020
CORAM
THE HONOURABLE MR. JUSTICE P.VELMURUGAN
CRL.O.P.Nos.28360 & 28373 of 2013
and
M.P.Nos.1 & 1 of 2013

1.K.J.Prakash
2.N.A.Murugesan
3.K.J.Kannanmmal ....Petitioners in both the petitions/ Accused 3 to 5

Vs

T.Nagarajan .... Respondent in both the petitions

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of Criminal Procedure Code to call for the records in respect of the complaint filed by the respondent herein in C.C.Nos.235 & 231 of 2012 on the file of Judicial Magistrate, Bavani and quash the same.

For Petitioners: Mr.S.R.Nalliyappan.
For Respondent : Mr.P.Jagadeesan.

C O M M O N O R D E R

The respondent herein has filed a private complaint under Section 200 of Criminal Procedure Code for the offence under Section 138 of Negotiable Instruments Act before the Judicial Magistrate, Bavani. The learned Judicial Magistrate has taken cognizance of the complaint in C.C.Nos.235 & 231 of 2012 and issued summons to the petitioners herein. After the receipt of summons, the petitioners herein have filed these present Criminal Original Petitions to quash the proceedings against them on the ground that they are not liable for the said offence and the co-accused A2 alone had issued cheque on his personal capacity and not on the capacity of a partner and these petitioners have not participated in the day to day affairs of the company and they are only partners.

2.The learned Counsel for the petitioners would submit that the alleged cheque was issued by the co-accused A2 on his personal capacity and not as a partner of the A1 / firm and the Accused 3 to 5 who are the petitioners herein are not connected with this transaction and therefore, the case against these petitioners have to be quashed.

3.However, the learned Counsel for the respondent submitted that A1 is a registered partnership firm in which A2 to A5 are partners and they had transactions with the respondent / complainant and for and on behalf of A1 firm, they issued cheques and so, A2 had issued cheque on behalf of the A1 / firm and the other accused A3 to A5 had transactions with the A1 / firm and therefore, all the accused are liable to repay the amount and submitted that the contentions of the learned Counsel for the petitioners cannot be accepted. The learned Counsel for the respondent submitted that all the accused have to be tried before the trial Court and they have to prove their innocence on the trial and sought for dismissal of the petition.

4.Heard and perused the records.

5.Admittedly the disputed cheque was signed by A2. The signature does not reflect that the cheque has been issued for and on behalf of A1 on his personal capacity. However, whether the cheque has been issued on personal capacity or on the capacity of the partner of the firm is a matter to be decided after trial. However, there is no documents to show that A3 to A5 who are the petitioners herein are actively participated in the A1 / firm and also involved in the transactions and also issued cheques either in the capacity of co-applicant or as a witness or whatsoever.

6.It is a settled position of law that if one of the partners / directors is the borrower, all the partners / directors need not be prosecuted. Though the partners / directors are actively participating in the day to day affairs of the firm / company, the Managing Director / Managing partner who is actively participating in the day to day affairs of the firm / company and issuing cheques and involving in the transactions will only be held responsible for prosecution.

7.Therefore, this Court finds that the C.C.Nos.235 & 231 of 2012 filed against the petitioners herein who have been arrayed as accused 3 to 5 is unnecessary. Hence, the complaint is closed against the petitioners herein. However, the respondent can proceed with the complaint against A1 and A2.

8.It is represented by the learned Counsel for the respondent that C.C.Nos.235 & 231 of 2012 have been subsequently transferred to Fast Track Court No.1, Erode and they have been renumbered as S.T.C.Nos.283 & 284 of 2017. Since the complaint is pending from the year 2012, the learned Fast Track Court Magistrate No.1, Erode is directed to dispose the cases in accordance with law within a period of three months from the date of receipt of the copy of this order.

9.In the result, these Criminal Original Petitions are allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS V)

/true copy/
Sub Asst. Registrar

ay

To

The Presiding Officer
Fast Track Court No.1,
Erode.

+2 ccs to Mr.R.Nalliyappan Advocate sr6014
+1 cc to Mr.P.Jagadeesan Advocate sr6561

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