



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2020

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. No.8415 of 2018 and Crl.M.P. Nos.4370 & 4371 of 2018

Sasikumar

Petitioner/Accused no.2

vs.

S. Vidhyasagar
S/o Shanmugasundaram
Proprietor, Geetha Textiles
256 Chetty Street
Tiruchengode Branch
at No.3 Venkatachalam Street
Erode - 1

represented by its Manager and
Power of Attorney holder, E.K.P. Sambhathan
S/o Palaniappa Mudaliar

Respondent/Complainant

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to call for the records relating to C.C. No.25 of 2011 on the file of the Judicial Magistrate No.II, Erode and quash the same.

For petitioner	Mr. N. Manokaran
For respondent	Mr. M. Guruprasad

ORDER

For the sake of convenience, the parties are referred to by their names.

2 It is the case of Vidhyasagar (complainant) that Selvaraj (A.1) is the Proprietor of Ganesh Yarn Syndicate and that Sasikumar (A.2/petitioner herein) is the Manager of Ganesh Yarn Syndicate; the accused purchased yarn from Vidhyasagar on credit and was due a sum of Rs.16,79,339.75, towards which, the accused gave three cheques drawn on the account of Ganesh Yarn Syndicate and signed by Selvaraj as Proprietor in favour of Vidhyasagar; the cheques were dishonoured and hence, Vidhyasagar issued a statutory notice dated 22.12.2010 to Selvaraj (A.1) and Sasikumar (A.2), calling upon them to make the payment or inter alia, face prosecution under Section 138 of the Negotiable Instruments Act, 1881 (for short "the NI Act"); since the amounts were not paid, Vidhyasagar initiated a prosecution in C.C.No. 25 of 2011 in the Court of Judicial Magistrate No.II, Erode, under Section 138 of the NI Act against Selvaraj (A.1), Proprietor of Ganesh Yarn Syndicate and Sasikumar (A.2), Manager



of Ganesh Yarn Syndicate. While so, Sasikumar (A.2) has filed the instant criminal original petition seeking quashment of the prosecution against him on the simple ground that Ganesh Yarn Syndicate is a proprietary concern, for which, Selvaraj (A.1) is the Proprietor and therefore, he (A.2) cannot be prosecuted vicariously with the aid of Section 141 of the NI Act.

3 Heard Mr. N. Manokaran, learned counsel for Sasikumar (A.2) and Mr. M. Guruprasad, learned counsel for Vidhyasagar.

4 Even going by the averments in the statutory notice and in the complaint filed by Vidhyasagar, it is apparent that the impugned cheques were issued by Selvaraj (A.1) as the Proprietor of Ganesh Yarn Syndicate. In such view of the matter, Sasikumar (A.2), who is the Manager of Ganesh Yarn Syndicate, a proprietary concern, cannot be vicariously held liable with the aid of Section 141 of the NI Act.

5 In view of the above, the prosecution against Sasikumar (A.2) alone in C.C. No.25 of 2011 on the file of the Judicial Magistrate Court No.II, Erode, is quashed.

6 As a sequitur, this criminal original petition stands allowed. Connected Crl.M.Ps. are closed.

7 Mr. Guruprasad, learned counsel for Vidhyasagar submitted that there is no progress in C.C. No.25 of 2011 as Selvaraj (A.1) is in abscondence.

8 Taking note of the above submission of Mr. Guruprasad, this Court directs the trial Court to take appropriate steps to serve summons on Selvaraj (A.1).

Further, it is brought to the notice of this Court that Selvaraj (A.1) has filed insolvency proceedings in I.P. No.36 of 2010 and the same is pending on the file of the Sub Court, Erode. Hence, the service of summons in the instant prosecution may be effected on Selvaraj (A.1) through the Sub Court, Erode, where, the insolvency proceedings is pending. If, despite all these, Selvaraj (A.1) evades receipt of summons, it will be legitimate for the trial Court to issue bailable warrant and follow it up with non-bailable warrant.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar



To

1

The Subordinate Judge
Erode

2

Do Thro Chief Judicial Magistrate
Erode

3

The Judicial Magistrate No.II
Erode

4

The Public Prosecutor
Madras High Court
Chennai - 600 104

+1cc to Mr.N.Manokaran, Advocate in SR.29128

+1cc to Mr.N.Guruprasad, Advocate in SR.29125

Crl.O.P. No.8415 of 2018

rv(18/09/2020)