

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2020

CORAM:

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

Crl.O.P. No.2654 of 2018
and Crl.M.P. Nos.1099 & 1100 of 2018

Sasikumar

..Petitioner/Accused-2

.vs.

T.Saravana

S/o. G.Thangavel

Proprietor, M/s. NRG Tex

74, Venkatachalam Street

Erode - 638 001.

Represented by its Manager and

Power of Attorney Holder, T.Sivasubramanian

S/o.Thangavel

..Respondent/Complainant

Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the criminal case in C.C.No.1287 of 2011 on the file of the learned Judicial Magistrate-II, Erode, and to quash the same by allowing this Criminal Original Petition.

For Petitioner : Mr. N. Manokaran

For Respondent : Mr. V.S.Kesavan

ORDER

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

2. It is the case of Saravana (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 Saravana on credit for a sum of Rs.79,02,129/- and has paid Rs.52,11,662/-; and for the balance due of Rs.26,90,467/-, the accused gave five cheques viz., (i) Ch.No.788623 dated 23.11.2010 for Rs.1,96,498/- (ii) Ch.No.788624 dated 24.11.2010 for Rs.1,96,498/- (iii) Ch.No.788625 dated 25.11.2010 for Rs.1,96,498/-

(iv) Ch.No.788646 dated 03.1.2011 for Rs.2,00,000/- and
(v) Ch.No.788647 dated 06.01.2011 for Rs.2,68,000/- drawn on the account of Ganesh Yarn Syndicate and signed by Selvaraj as Proprietor in favour of Saravana. Of which, the accused instructed Saravana to present the cheques viz., Ch.No.788646 and Ch.No.788647, and accordingly, Saravana presented those cheques for payment, but the cheques were dishonoured and hence, Saravana issued a statutory notice dated 20.01.2011 to Selvaraj (A.1) and Sasikumar (A.2), calling upon them to make the payment for Rs.4,68,000/- 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, Saravana initiated a prosecution in C.C.No. 1287 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. V.S.Kesavan, learned counsel for Saravana.

4 Even going by the averments in the statutory notice and in the complaint filed by Saravana, 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.1287 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. V.S.Kesavan, learned counsel for Saravana submitted that there is no progress in C.C. No.1287 of 2011 as Selvaraj (A.1) is in abscondence.

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

9. 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.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Sub Judge,
Erode.
2. The Judicial Magistrate No.II
Erode.
3. The Public Prosecutor
Madras High Court
Chennai - 600 104.

+lcc to Mr.N.Manokaran, Advocate, Sr.No.32083

CrI.O.P. No.2654 of 2018

ca (co)
rr ii (19/11/2020)