IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2021

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

CRIMINAL ORIGINAL PETITION NO.27088 OF 2016
&
CRL.M.P.NO.13709 & 13710 OF 2016

Mr.Viswanathan
Proprietor,
M/s.Aashish Enterprises,
No.55, Gandhi Nagar Main Road,
Sathuma Nagar,
Chennai – 600 019. ... Petitioner

-Versus-

M/s.Madras Steels & Tubes,
Rep. By its Authorized Signatory,
Mr.S.Ramesh,
H.O. 73/75, Sembudoss Street,
2nd Floor, Chennai - 600 001. ... Respondent

PRAYER:- Petition filed under Section 482 of the Code of Criminal Procedure, 1973, praying to call for the records in C.C.No.4762 of 2013 pending on the file of the learned Metropolitan Magistrate, Fast Track Court-IV, George Town, Chennai.

For Petitioner : Mr.R.Thirumoorthy

For Respondent : No Appearance

ORDER

This criminal original petition has been filed seeking to quash the private complaint pending in C.C.No.4762 of 2013 on the file of the learned Metropolitan Judge, Fast Track Court -IV, Chennai for offence under Section 138 of The Negotiable Instruments Act, 1881.

2. It is alleged in the complaint that in order to discharge a portion of his liability, the petitioner accused had issued

two cheques dated 21.02.2013 & 04.03.2013 for Rs.1,00,000/- and Rs.70,750/- respectively drawn on Dena Bank, George Town Branch and when the cheques had been presented for collection in to the complainant's bank, they got returned as “Insufficient Funds”. As such, the petitioner accused was called upon to discharge the aforesaid cheque amount of Rs.1,70,750/- within 15 days from the date of receipt of the notice, failing which, it was informed that necessary criminal proceedings will be initiated. Though notice was acknowledged by the petitioner accused, he neither paid the cheque amount nor issued any reply. Hence, the respondent had not other option except to file a private complaint. The complaint was taken cognizance by the learned Magistrate for offence under section 138 of the NI Act and issued process. It is this criminal proceedings which is now sought to be quashed.

3. The learned counsel appearing for the petitioner submitted that entire averments in the complaint do not disclose as to how the petitioner was legally liable to pay the debt and the cheques in question were admittedly issued by one Aashish Enterprises duly signed by its Proprietrix - V.Sujatha, who is none other than the wife of the petitioner herein, except the relationship of husband and wife, the petitioner has nothing to do with the Proprietrix concern which was being run by his wife. The Certificate of the Registration issued by the District Industries Centre on behalf of the State and the GST Registration Certificate issued by the government of India would prove the same. Despite knowing the fact that the petitioner had no connection with the Proprietrix concern, the respondent filed a false complaint against the petitioner and the complaint is nothing but an abuse of process of law and in order to harass the petitioner. Therefore, the learned counsel prayed this court to quash the criminal proceedings.

4. Even though private notice was served on the respondent and the name of the respondent has been printed in the cause title, consistently, there had been no representation for him for the last two hearings.

5. I have considered the submissions made by the learned counsel for the petitioner and also perused the records carefully.

6. On a careful perusal of the available records, more particularly, the complaint filed under Section 200 of Cr.P.C. it could be seen that there is no averment in the complaint to show that the petitioner had any business transaction with the respondent and he was liable to pay any debts and the cheques in question were issued by him in discharge of his liability. The Xerox copies of the cheques have been placed on record in the

form of typed set of papers. Both of them have been issued on behalf of Aashishi Enterprises and the signatory is one V.Sujatha, proprietrix of that Aashish Enterprises. The registration certificate of the concern and GST Registration Certificate would fortify the same. Though the said Sujatha is the wife of petitioner, except the relationship of husband and wife between the petitioner and the Proprietrix of Aashish Enterprises, there is no evidence to show that the cheques were issued by the petitioner in favour of the respondent in discharge of legally enforceable debt and as such the petitioner cannot be prosecuted. As rightly pointed out by the petitioner under Section 138 of the Act, liability can thus, be fastened only on the Proprietor thereof who had issued the cheques can be made liable and the petitioner cannot be made liable for offence under Section 138 of the NI Act for the liability incurred by his wife. Therefore, this court is of the considered view that the criminal proceedings instituted as against the petitioner is nothing but an abuse of process of law.

7. For the discussions made above, the criminal original petition deserves to be allowed and proceedings pending on the file of the Fast Track Court-IV, Chennai, is liable to be quashed.

In the result, the Criminal Original Petition is allowed and the criminal proceedings in C.C.No.4762 of 2013 pending on the file of the learned Metropolitan Magistrate, Fast Track Court-IV, George Town, Chennai, stand quashed in its entirety. Consequently, connected MPs stand closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kmk

To

The Metropolitan Magistrate,
Fast Track Court-IV,
George Town, Chennai.

CRL.O.P.NO.27088 OF 2016

JPL(CO)
PBS/08/02/2022