



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.09.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.OP.No.16594 of 2018

K.Sasi

...Petitioner

Vs.

M/s.Manilala Patel Clearing
Forwarding Private Limited,
Rep. by its Authorised person,
Mr.Babu
Office at
Door No.4/38, 5th Floor,
Port View tower,
Krishnan Kovil Street,
Chennai.

...Respondent

Prayer : This Criminal Original Petitions filed under Section 482 of Code of Criminal Procedure to call for the records in CC.No.303 of 2018 on the file of the learned VII Metropolitan Magistrate, George Town and quash the same.

For Petitioner: Mr.K.Myilsamy

For Respondent: Mr.L.Christophor

ORDER

The Criminal Original Petition has been filed to quash the proceedings in C.C. No.303 of 2018 on the file of the learned VII Metropolitan Magistrate, George Town.

2. The petitioner, who is arrayed as second accused in CC.No.303 of 2018 on the file of the learned VII Metropolitan Magistrate, George Town, has filed this original petition under section 482 of Cr.P.C. seeking to quash the said proceedings.

3. The facts of the case are as follows:

The petitioner claims to be an employee of the first accused partnership firm. It is the case of the petitioner that



there was a total outstanding of Rs.6,52,067/- in respect of the existed business transactions between the first accused /partnership firm and the defacto complainant, due to which, the first accused issued a cheque for a sum of Rs.1,00,000/-. Subsequently, when the cheque was presented before the Bank, the same was returned with an endorsement as ''insufficient funds''. In view of that, the defacto complainant issued a statutory notice calling upon the first accused to repay the amount due. Since no repayment was forthcoming, the defacto complainant lodged a private complaint in C.C. No. 303 of 2018 under Section 138 of the Negotiable Instruments Act pending on the file of the learned VII Metropolitan Magistrate, George Town. To quash the said complaint, the petitioner/second accused has filed the present revision before this Court.

4. The learned counsel for the petitioner submitted that he is arrayed as second accused in the complaint and he is a partner in the above said firm. The learned counsel further submitted that the petitioner is working as a General Manager in the first accused firm on monthly salary basis and he has not participated in the management of the first accused company and he is not involved in the day to day affairs of the company. The learned counsel for the petitioner further submitted that the alleged cheque bearing No.020667 dated 20.11.2015 was not signed by the petitioner and he has not issued any cheque to the respondent and he is not the signatory of the said cheque. Hence, the learned counsel prays to quash the complaint filed by the respondent.

5. The learned counsel for the respondent/defacto complainant filed a counter affidavit and submitted that the petitioner is an employee in the first accused partnership firm is purely a false statement. The petitioner is contesting party in O.S.No.291/2019 on the file of the XIX Additional Judge, City Civil Court, Chennai. In that suit, the petitioner himself stated in the cause title that he is a partner in the above said suit. Hence, the present revision has to be dismissed.

6. Heard learned counsel for both sides and perused the materials available on record.

7. On a perusal of the relevant materials available, it is seen that the petitioner was working as a General Manager in the first accused Partnership firm. Further, he was neither a partner nor in a position to conduct any day to day affairs of the Partnership firm. As per the Section 138 of the Negotiable Instruments Act, a person who is in charge or responsible for



the company and issued a cheque was liable to be punished. In this present case, the petitioner is not a partner to the first accused firm. The petitioner is only an employee of the first accused firm. Though the defacto complainant has averred that the petitioner is a partner of the first accused firm, sufficient materials have not been produced before this Court to substantiate the same. In the absence of any strong evidence against the petitioner, the trial against the petitioner will only be a futile exercise and wasting the judicial time. In view of the above, no useful purpose would be served by prosecuting a person, who is a salaried employee of the firm. Further on a careful perusal of the cheque, it is alleged that the initial starts as ''D'' , but the petitioner name is ''K.Sasi''. In view of the above fact that since the respondent has not made out any prima facie case as against him, the same is liable to be quashed.

8. For the foregoing reasons, this Criminal Original Petition is allowed and the proceedings in CC.No.303 of 2018 on the file of the learned VII Metropolitan Magistrate, Chennai is quashed. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

rli

To

1.The VII Metropolitan Magistrate,
George Town.

2.Do thro the Chief Metropolitan Magistrate,
Egmore, Chennai 8.

+2cc to Mr.L.Christophor, Advocate SR.No.48823

+1cc to Mr.K.Myilsamy, Advocate SR.No.48875

Cr1.OP.No.16594 of 2018

VSN I(CO)

GN(29/12/2021)