

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.O.P No.1746 of 2018
&
Crl.M.P.Nos.669 & 670 of 2018

N.G.Thangavel

..Petitioner

Vs.

Sree Venkateswara Fabrics
Rep. By its Prop.
P.Seethappan,
S/o.Palanisamy,
382, Nasiyanur Road, Narayanaavalasu,
Erode.

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the case in S.T.C.No.676/2017 on the file of the Judicial Magistrate (Fast Track) court No.II, Erode and quash the same as far as the petitioner is concerned.

For Petitioner : Mr.I.C.Vasudevan

For Respondent : Mr.M.Guruprasad

ORDER

This petition has been filed seeking to quash the proceedings in S.T.C.No.676 of 2017, pending on the file of the learned Judicial Magistrate (Fast Track) Court II, Erode.

2. The respondent has filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 against M/s.Nishok Impex which is claimed to be a partnership firm. The petitioner has been arrayed as A3 in the complaint by describing him as partner of the firm.

3. The petitioner has filed this quash petition mainly on the ground that the cheque was signed by A2 on behalf of A1 and the respondent has not made any averments as to how the petitioner is responsible for running the business or involved in the day-to-day affairs of the business of A1. According to the petitioner, the ingredients of Section 141 of the Negotiable Instruments Act has not been satisfied in the complaint and therefore, the complaint is liable to be quashed insofar as the petitioner is concerned.

4. I heard Mr.I.C.Vasudevan, the learned counsel for the petitioner and Mr.M.Guruprasad, the learned counsel for the respondent.

5. Insofar as the company or partnership firm is concerned, every director or partner as the case may be, who are added as an accused in the complaint filed under Section 138 of the Negotiable Instruments Act must be shown to have been in-charge and responsible for conduct of the business. In the present case, the only averment that has been made in the complaint against the petitioner is that the petitioner had the knowledge about the cheque issued in favour of the respondent by A1 and A2. Except for this averment, there is absolutely no other averment made against the petitioner.

6. It has been repeatedly held by the Hon'ble Supreme Court and this Court that the complaint should specifically state as to how and in what manner a director or a partner as the case may be, was in-charge of and responsible for the conduct of the business of the company or firm and a mere bald statement in the complaint will not be sufficient to satisfy the requirements of Section 141 of the Negotiable Instruments Act. Vicarious liability must be pleaded and proved and it can never be inferred. Useful reference can be made to the judgment reported in Anil Pathak and Others Vs. Larsen and Toubro Limited reported in 2019(1)MLJ(Cr1)385.

7. Earlier, this Court by an order dated 03.02.2021 in Cr1.O.P.No.415 of 2018 quashed the complaint in respect of the co-accused. Considering the facts of the case and the proceedings was quashed by this Court for the similarly placed person.

8. In view of the above, this Court has absolutely no hesitation in quashing the complaint filed against the petitioner and the same is quashed insofar as the petitioner is concerned.

9. In the result, the proceedings in S.T.C.No.676 of 2017, pending on the file of the Judicial Magistrate, Erode, is hereby quashed, insofar as the petitioner is concerned. Accordingly, the Criminal Original Petition is allowed and there shall be a direction to the Court below to complete the proceedings in S.T.C.No.676 of 2017, within a period of six months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

msrm
To

1. The Judicial Magistrate (Fast track) Court II,
Erode.
2. The Public Prosecutor,
High Court of Madras,
Madras.

+1 CC to Mr.M. Guruprasad, Advocate sr 22821.

CrI.O.P No.1746 of 2018
&
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AD(CO)
SP(18/06/2021)

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