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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 15.11.2021

CORAM

THE HONOURABLE MR.JUSTICE N.SATISH KUMAR

CRL.O.P.NO.5058 OF 2017

&

CRL.M.P.NOS.3763 AND 3764 OF 2017

Mohan

... Petitioner

Vs.

M/s.Muthu Sri Chakra Packaging Pvt. Ltd.,
Rep. By its Manager
Mr.J.Meeganathan
R.S.No.71/1, Poraiyur
Villanur, Puducherry
Pin: 605 110

... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C to call for the records and quash the proceedings in S.T.C.No.61 of 2016 pending on the file of Judicial Magistrate No.II, Puducherry.

For Petitioner : Mr.D.Parisuthanathan

For Respondent : Mr.V.Raghavachari

ORDER

This petition has been filed to quash the proceedings under Section 138 of Negotiable Instruments Act, 1881 in S.T.C.No.61 of 2016 on the file of Judicial Magistrate II, Puducherry.

2. Heard the learned counsel for petitioner and the learned counsel for respondent.

3. The main contention of the learned counsel for petitioner is that the complaint is bereft of details and the petitioner is not a partner in A.G.Food Products whereas the cheque has been



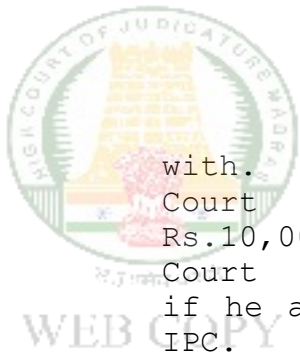
issued only by A.G.Food Products. In support of his contention, he has placed reliance on unregistered Partnership Deed. The learned counsel further submitted that there is no averment in the complaint about the role of the present petitioner and therefore, the entire proceedings in S.T.C.No.61 of 2016 has to be quashed.

4. On the contrary, the learned counsel for respondent submitted that the documents produced before the Court cannot be looked into at this stage and it is matter of evidence. Learned counsel further contended that legal notice was sent to the same address for which there was no reply, but the summons which was sent to the same address was received by the petitioner and therefore, whether or not the petitioner is a partner or not is a matter of evidence and therefore, these things cannot be gone into and he opposed this application.

5. On a perusal of the documents placed before this Court, this Court is of the view that though there are lack of sufficient pleadings in the petition, specific allegation has been made in the legal notice as to the borrowal and issuance of cheque for valid consideration, for which there was no reply from the petitioner. Be that as it may, though some documents have been placed before this Court to show that the petitioner is not a partner of A.G.Food Products as the document is unregistered one, its probative value cannot be gone into at this stage, but the fact remains that summons served on the petitioner on the very same address has been received by the petitioner. When the Court has posed the question as to what is the explanation for receiving the summons and not replying to the legal notice, learned counsel appearing for the petitioner submit that summons though served on the same address not served on him, which has been handed over to him by an employee.

6. In such view of the matter, whether the petitioner is partner or not and whether he was responsible for the affairs of the firm is a matter of evidence, which has to be decided in the trial. Therefore, liberty is granted to the petitioner to raise all his defence before the trial Court.

7. With this observation, this petition is dismissed. The trial Court shall dispose of S.T.C.No.61 of 2016 within a period of six months from the date of receipt of a copy of this order. Personal appearance of the petitioner except for receiving copies and answering charges and questions, if any, is dispensed



with. The petitioner shall file an application before trial Court under Section 436 Cr.P.C and execute a bond for Rs.10,000/- with two sureties each on such application trial Court shall release the accused on the same day. Thereafter, if he absconds, fresh FIR could be filed under Section 229A of IPC.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gpa/gba

To

The Judicial Magistrate No.II
Puducherry

+lcc to Mr.V.Raghavachari, Advocate, S.R.No.58659

Cr1.O.P.No.5058 of 2017 &
Cr1.M.P.Nos.3763 and 3764 of 2017

GPL(CO)
RLP(02/12/2021)