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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 8/12/2021

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRL. O.P. NO.20891 OF 2017

T. Manokaran

... Petitioner

Vs

S.Vigneshwaran

... Respondent

PRAYER :

Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in S.T.C.No.244 of 2015, pending on the file of Learned Judicial Magistrate-cum-Fast Track Court, Poonamallee, Chennai.

For Petitioner

...

Mr.V.Purushothaman

For Respondent

...

Mr.R.Murali

O R D E R

This Criminal Original Petition has been filed to call for the records in S.T.C.No.244 of 2015, pending on the file of the learned Judicial Magistrate-cum-Fast Track Court, Poonamallee, Chennai.

2. The case of the prosecution is that the accused had offered to supply granite to the complainant and received an advance of Rs.5,00,000/- and realised the amount. The accused defaulted in supplying, offered to return the amount and repaid Rs.3,00,000/- as part payment. All the accused issued a cheque for Rs.2,00,000/-. The cheque was signed by first and third accused on the advise of the second accused, who is a partner. When the same was presented for encashment, it was dishonoured. After complying the mandatory requirements, complaint has been filed before the learned Judicial Magistrate-cum-Fast Track Court, Poonamallee and the same was taken on file in S.T.C.No.244 of 2015.



3. Heard Mr.V.Purushothaman, learned counsel appearing for the petitioner and Mr.R.Murali, learned counsel appearing for the respondent.

4. The first submission advanced by the learned counsel appearing for the petitioner is that firm has not made as an accused. Hence, the partners individually cannot be made liable. The second submission advanced by the learned counsel appearing for the petitioner is that second legal notice is also sent in this matter. Therefore, lodging of the prosecution is not maintainable in the eye of law.

5. At the outset, this Court is not in agreement with the submissions in respect of the first submission. In R.Rajagopal Vs. S.S.Venkat (2001) 10 SCC 91, it is clearly held that complaint under Section 138 of the Negotiable Instruments Act filed against the partner of the firm, without arraying the firm as accused, is very well maintainable. Similarly, the issue of the second notice is of the matter of evidence and hence, the same cannot be decided in 482 jurisdiction.

6. In the result, this Criminal Original Petition is dismissed. Petitioner is at liberty to raise legal ground before the trial Court. Trial Court is directed to dispose of the O.P., as expeditiously as possible. The accused is directed to appear before the trial Court within two weeks from the date of receipt of a copy of this order and file an application under Section 436 of Code of Criminal Procedure. On such filing of the application, trial Court is directed to release the petitioner on bail on the same day on executing a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) each with two sureties. If thereafter, he absconds, a fresh FIR can be registered under Section 229 A of the Indian Penal Code. Consequently, connected Criminal Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mvs.



To

1. The Judicial Magistrate-cum-Fast Track Court, Poonamallee,
Chennai.

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+1cc to Mr.V.Purushothaman, Advocate, S.R.No.64720

+1cc to Mr.R.Murali, Advocate, S.R.No.64972

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CP (CO)
PM/10/01/2022