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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2021

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.NO.11553 OF 2017

AND

CRL.M.P.NO.7586 OF 2017

1.Smt.V.Sadayammal

2.Smt.K.Gandhimathi

3.Sri.S.Muthuswamy

...Petitioners/Accused Nos.3, 4 & 5

Vs.

Sri.T.Ekambaram
by his alleged Power Agent,
Sri.B.Shankar

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records in C.C.No.4199 of 2012, on the file of the learned Metropolitan Magistrate, Fast Track Court No.III, Saidapet, Chennai and quash the same.

For Petitioners : Mr.B.R.Shankaralingam

For Respondent : No appearance

ORDER

This Criminal Original Petition has been filed to quash the private complaint filed against the petitioners/Accused 3, 4 & 5 in C.C.No.4199 of 2012 for the offence under Section 138 of the Negotiable Instrument Act on the file of the learned Metropolitan Magistrate, Fast Track Court No.III, Saidapet, Chennai.



2. The crux of the allegation is that the defacto complainant is a private financier. The first accused being a Partnership Firm, A2 along with the petitioners herein/A3 to A5 are the partners of the said Firm. It is the case of the defacto complainant that in the year 2009, A2 has borrowed a sum of Rs.40,00,000/- (Rupees Forty Lakhs) from the defacto complainant as loan for development of his business in the said partnership firm and issued a cheque dated 28.12.2009 drawn on State Bank of Travancore, Karur Branch. On 24.03.2010, when the same was presented for encashment, it was dishonoured for the reason "Accounts Closed". After complying the statutory notice, the defacto complainant has filed the complaint.

3. The main contention of the learned counsel for the petitioners is that A3 to A5 were partners and also actively involved in the business of the 1st accused Partnership Firm. He further submitted that except contending in the complaint that these petitioners were partners or incharge of the firm in the business, there is no specific averment whatsoever made in the complaint as to the role played by the petitioners in the partnership business. Whereas, the very complaint itself indicate that the amount has been advanced to A2, who has issued a cheque. It is his further contention that the partnership firm itself dissolved on 09.05.2007 and the same was intimated to the Registrar of Firm. Thereafter, Form-A has been issued by the Registrar of Firms maintained under Section 59 of Indian Partnership Act, 1932 confirming the dissolution of partnership firm. Therefore, contention that these petitioners as partners of the firm in the year 2009 is highly improbable. Hence, he prayed to quash the proceedings.

4. Despite notice served on the respondent and his name being printed in the cause list, none appeared for him.

5. This Court has perused the entire materials available on record except contending that these petitioners were actively involved with the 1st accused Partnership Firm, no other specific averment whatsoever made in the entire complaint as to the role played by these petitioners. Be that as it may, Form-A issued by the Registrar of the partnership firm clearly shows that the firm was dissolved with effect from 09.05.2007. Thereafter, he also issued a copy of Dissolution of Partnership Firm of the petitioners on 27.07.2007, the same clearly shows that the Partnership Firm was dissolved in the year 2007. Therefore, these petitioners actively participated in the partnership business does not arise at all.

6. In such view of the matter, the proceedings initiated as against these petitioners is quashed. Accordingly, this Criminal



Original Petition is Allowed. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

msv/nr

To

1. The Metropolitan Magistrate,
Fast Track Court No.III,
Saidapet, Chennai.
2. -do- through The Chief Metropolitan Magistrate,
Egmore, Chennai.

Crl.O.P.No.11553 of 2017
and Crl.M.P.No.7586 of 2017

SSD(CO)
RLP(06/01/2022)