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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 02.12.2021

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl.O.P.No.11790 of 2017

and

Crl.M.P.Nos.7733 and 7734 of 2017

1.M/s.Kwality Textile Processors
S.F.No.273/2, Seyyan Thottam,
Kuppandampalayam,
Veerapandi Post,
Tiruppur-641605

2.Ruba

3.K.Subramaniam

4.S.Saraswathi

5.S.Jeyakumar

. . . Petitioners

Versus

R.Duraisamy

. . . Respondent

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the case pending in C.C.No.210 of 2017, on the file of the Judicial Magistrate No.1, Tiruppur and quash the same.

For Petitioners : Mr.C.P.Palanichamy

For Respondent : No appearance

O R D E R

This Criminal Original Petition has been filed to quash C.C.No.210 of 2017, pending on the file of the learned Judicial Magistrate No.1, Tiruppur.

2. It is the case of the prosecution that A.1 is a partnership firm and A.2 to A.5 are the partners. During the first week of February 2014, fifth petitioner approached the



defacto complainant and borrowed a sum of Rs.7 lakhs. A.3 is the authorised signatory and issued cheque. When the cheque was presented for encashment, the same was dishonored. After statutory notice, proceedings were initiated.

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3. Heard the learned counsel appearing for the petitioners and there is no representation on behalf of the respondent.

4. It is the contention of the learned counsel for the petitioners that the accused firm is not a partnership firm. It is a proprietaryship concern. Petitioners 2, 4 and 5 are not the partners, as stated in the complaint and therefore, proceeding against A.2, 4 and 5 is an abuse of process of law. Hence prayed for quashment of the complaint against A.2, 4 and 5.

5. There is no representation on behalf of the respondent.

6. On a perusal of the complaint, it is seen that the first accused appear to be a partnership concern and the third accused is the authorised signatory. To substantiate the case of the petitioners, they had produced the Income Tax returns Saral copy which indicates that the returns were filed in the name of the third petitioner, as Proprietor of the business concern. Every members cannot be made as an accused. There must be allegation to show that all were incharge of the day-to-day affairs of the firm. Admittedly, A.3 is the sole proprietor of the firm and cheque was issued by A.3 alone. In such a view of the matter, forcing others to face the ordeal of the trial is nothing but an abuse of process of law.

7. In the result, this Criminal Original Petition is partly allowed. C.C.No.210 of 2017, pending on the file of the learned Judicial Magistrate No.I, Tiruppur, is quashed, as against A.2, 4 and 5 alone. Learned Judicial Magistrate No.I, Tiruppur, is directed to expedite C.C.No.21 of 2017 as against A.1 and A.3 and dispose of the same, within a period of six months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

psa/mvs



To

1.The Judicial Magistrate No.1,
Tiruppur.

2.Do Thro The Chief Judicial Magistrate,
Tiruppur.

Cr1. O.P. No. 11790 of 2017

SV (CO)
GN (23/12/2021)