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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2021

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRL. O.P. NO. 21570 OF 2017

AND

CRL.M.P.NOS. 12683 & 12684 OF 2017

S.Krishnan

. . . Petitioner/
Accused No.3

Versus

M/s.Mahindra & Mahindra Financial Services Ltd.,
New No.244(Old No.713), 3rd Floor, Level 4 Rear Block,
Carex Centre, Mount Road,
Thousand Lights, Chennai - 600 006,
Rep by its Authorised Signatory,
K.Nithin, Son of Kannan.

. . . Respondent/
Complainant

PRAYER :

Criminal Original Petition filed under Section 482 of Cr.P.C. to call records in C.C.No.3206 of 2016 on the file of the learned VII Metropolitan Magistrate, George Town, Chennai, and quash the same.

For petitioner : Mr.J.Bharathiraja

For respondent: No appearance

O R D E R

This Criminal Original Petition has been filed to quash the complaint in C.C.No. 3206 of 2016, pending on the file of the learned VII Metropolitan Magistrate, George Town, Chennai.

2. Heard the learned counsel appearing for the petitioner and perused the materials available on record.



3. The case of the prosecution is that the second accused, who is the sole proprietor of the first accused availed certain financial facilities from the respondent in the year 2014. Petitioner/third accused signed as a co-applicant in the loan agreement dated 4/11/2014. Second accused has not repaid loan as per the schedule. Therefore the respondent herein invoked the Arbitration Clause contained in the loan agreement and award came to be passed. After the award came to be passed, second accused issued a cheque, however, the same was returned stating "Funds Insufficient" on 23/9/2016. Therefore, the complaint has been filed.

4. On a careful perusal of the entire complaint would indicate that the cheque was drawn by the second accused towards the arbitral award. It is to be noted that to initiate action under the Negotiable Instruments Act, cheque should have been drawn by the person from the account maintained by him, which is not the case here. Petitioner is neither the Proprietor of the first accused nor issued cheque in question or signed the cheque, so as to attract the prosecution under the Negotiable Instruments Act.

5. In such a view of the matter, prosecution against the petitioner/A.3 is not maintainable. Accordingly, this Criminal Original Petition is allowed. C.C.No.3206 of 2016 pending on the file of the learned VII Metropolitan Magistrate, George Town, Chennai against A.3 alone quashed. Consequently, connected Criminal Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

shk/mvs

To

- 1 The VII Metropolitan Magistrate,
George Town,
Chennai.
- 2 Do-thro The Chief Metropolitan Magistrate,
Egmore, Chennai-8.



3 The Public Prosecutor,
High Court, Madras.

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+1cc to Mr.J.Bharathiraja, Advocate, S.R.No.60855

Cr1. O.P. No.21570 of 2017

BP (CO)
PM/13/12/2021