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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.O.P.No.22517 of 2017

and

Crl.M.P.Nos.13161 and 13162 of 2017

1. T. Ramasamy
2. R. Ponnammal
3. K.P.Jeevitha
4. P. Poovathal

... Petitioners

Vs

S. Vani

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure (Cr.P.C) to call for the records in S.T.C.No.150 of 2017 passed by the Judicial Magistrate, Fast Track Court, Tiruchengode, filed under Section 200 of Crl.P., r/w. Sections 138 141 and 142 of Negotiable Instruments Act, 1881 dated 19/7/2017 and quash the same.

For petitioners : Mr.R.Marudhachalamurthy

For respondent : Mr.N.Manokaran

O R D E R

This Criminal Original Petition has been filed to quash S.T.C.No.150 of 2017 passed by the Judicial Magistrate, Fast Track Court, Tiruchengode, filed under Section 200 of Cr.P.C., r/w. Sections 138 141 and 142 of Negotiable Instruments Act, 1881 dated 19/7/2017.

2. The case of the prosecution is that first accused is the firm. Second accused is the Managing Partner and doing day-to-day business of the first accused. The accused 3 to 6 are the partners of the firm and were present at the time of issuance of cheque.



3. It is the case of the complainant that on behalf of the first accused, second accused borrowed a sum of Rs.23 lakhs on various dates for the day-to-day business need of first accused and second accused issued nine post dated cheques which were dishonoured. Hence attracted prosecution under Section 138 of the Negotiable Instruments Act.

4. Learned counsel appearing for the petitioners submitted that merely because accused Nos.3 to 6 are partners, the same itself is not sufficient to continue the prosecution against them. Whereas the complaint itself shows that A.2 is not only the authorised signatory but also incharge of the day to day affairs of the firm. A.4 to A.6 are female members and are falsely implicated in the case on hand. Hence prays for quashment of S.T.C.No.150 of 2017.

5. Learned counsel appearing for the respondent submitted that there are sufficient averments in the complaint about the role of A.3 to A.6. Therefore, the same cannot be quashed and further submitted that moreover, the prosecution against A.3 to A.6 are not proved. Hence, a direction may be issued to the trial Court to dispose of the same as expeditiously as possible.

6. Perused the materials available on record.

7. In the complaint itself, it is indicated that A.2 is the Managing Partner and is incharge of the day-to-day business of A.1 and amount stated to have been borrowed only by A.2, though A.3 to A.6 are partners. There are no averments made against these petitioners, except stating that they are the partners of the firm. Section 141 of the Negotiable Instruments Act do not make all the Partners are liable for the offence. Therefore, mere allegations against these petitioners who are actually not in the helm of affairs of the firm, cannot be prosecuted. Accordingly, this Court is of the view that it is a fit case to quash the proceedings for A.3 to A.6.

8. In the result, this Criminal Original Petition is allowed. Proceedings in S.T.C.No.150 of 2017, pending on the file of the learned Judicial Magistrate Fast Track Court, Tiruchengode, is quashed, with regard to the petitioners/A.3 to A.6 alone. It is for the second accused to take all his defence before the trial Court. The second accused is directed to appear before the trial Court, within a period of 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 second accused 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. The trial Court shall dispose of the main case as against A.1 and A.2, expeditiously, preferably, within a period of six months. Consequently, connected Criminal Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Judicial Magistrate,
Fast Track Court,
Tiruchengode.
2. The Chief Judicial Magistrate,
Namakkal.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.60524

+1cc to Mr.R.Marudhachalamurthy, Advocate, S.R.No.60541

Cr1.O.P.No.22517 of 2017

SSD(CO)
SU(09/12/2021)